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U.S. TRADE POLICY

Phase II: Private Sector

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

FIRST SESSION

DECEMBER 10, 11, 14, 15, AND 16, 1981; FEBRUARY 1 AND 2;
MARCH 18, 1982

PART A

DECEMBER 10, 11, 14, 15, AND 16, 1981

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U.S. TRADE POLICY

THURSDAY, DECEMBER 10, 1981

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met at 2 p.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[Press release announcing hearings follow:]

[Press release of Monday, December 7, 1981]

THE HONORABLE SAM M. GIBBONS, (D-FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES SCHEDULE FOR PRIVATE SECTOR PHASE OF OVERSIGHT HEARINGS ON U.S. TRADE POLICY

The Honorable Sam M. Gibbons, (D-Fla.), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, today announced that the private sector phase of oversight hearings on U.S. trade policy (previously announced in press release #10, #11, #12, and #13) will begin on Thursday, December 10, at 2:00 p.m. and continue on December 11, 14, 15, 16, 17, and 18. The hearing will be held each day in the Committee on Ways and Means main hearing room, 1100 Longworth House Office Building.

The schedule of witnesses is as follows. A final schedule will be available on the morning of each hearing day.

Thursday, December 10, beginning at 2:00 p.m.

Edmund T. Pratt, Jr., Chairman of the Board, Pfizer Inc.; Chairman, Emergency Committee for American Trade; Chairman, Advisory Committee for Trade Negotiations; Member, President's Export Council.

Harry L. Freeman, Senior Vice President, American Express Company; Chairman, Commercial Policy Committee, United States Council of the International Chamber of Commerce.

Rudy Oswald, Director, Department of Economic Research, American Federation of Labor and Congress of Industrial Organizations.

Friday, December 11, beginning at 9:30 a.m.

Lee L. Morgan, Chairman and Chief Executive Officer, Caterpillar Tractor Co.; Chairman, Task Force on International Trade and Investment, Business Roundtable.

Dr. Michael A. Samuels, Vice President, International, Chamber of Commerce of the United States.

Robert McLellan, Vice President, FMC Corporation; Chairman, International Trade Policy Committee, National Association of Manufacturers.

Timothy W. Stanley, President, International Economic Policy Association.

Paul R. Sacia, Legislative Assistant, National Farmers Union.

Monday, December 14, beginning at 10:00 a.m.

Labor-Industry Coalition for International Trade: Howard D. Samuel, President, Industrial Union Department, AFL-CIO; Lawrence C. McQuade, Senior Vice President, W. R. Grace and Company.

James H. Lundquist, partner, Barnes, Richardson & Colburn.

Shelley Appleton, Secretary-Treasurer, International Ladies' Garment Workers' Union, AFL-CIO on behalf of the Textile/Apparel Import Steering Group.

Evelyn Dubrow, Vice President and Legislative Director, International Ladies' Garment Workers' Union, AFL-CIO.

Peter V. Handal, President, Victor B. Handal & Bro., Inc.; Chairman, American Association of Exporters and Importers—Textile and Apparel Group.

American Association of Exporters and Importers: Lee Greenbaum, President; Robert E. Herzstein, Chairman, Committee on Exports; Eugene Milosh, Executive Vice President.

American International Automobile Dealers Association: Robert M. McElwaine, President; Edward G. Connelly, Chairman of the Board; accompanied by Bart S. Fisher of Patton, Boggs & Blow, Counsel.

Motor and Equipment Manufacturers Association (witness to be supplied).

John M. Hemphill, Executive Vice President, J. D. Power and Associates.

Tuesday, December 15, beginning at 9:30 a.m.

Gordon C. Hurlbert, President, Westinghouse Power Systems Company.

C. Fred Bergsten, Director, Institute for International Economics.

Alan Wm. Wolff, partner, Verner, Liipfert, Bernhard and McPherson.

Harald B. Malmgren, President, Malmgren, Inc.

Congressional Steel Caucus: The Honorable Joseph M. Gaydos, Chairman; The Honorable Adam Benjamin, Jr., Executive Committee Chairman.

Robert B. Peabody, President, American Iron and Steel Institute.

Specialty Steel Industry of the United States (witness to be supplied).

American Retail Federation and National Retail Merchants Association: George H. Voyer, Senior Vice President, Import Merchandising, R. H. Macy and Company, Inc.; Richard A. Maxwell, Divisional Vice President, Imports, Associated Dry Goods Corporation; (third witness to be supplied).

Richard C. Fenton, President, Committee for Small Business Exports.

James A. Gray, President, National Machine Tool Builders Association.

Wednesday, December 16, beginning at 9:30 a.m.—Panel: Electronics Industries

Thomas A. Christiansen, Director, International Trade Policy, Hewlitt-Packard Company; Vice Chairman, International Affairs Committee, Scientific Apparatus Makers Association.

Alex Lidow, Vice President, Research and Development, International Rectifier Corporation on behalf of the Semiconductor Industry Association.

Peter F. McCloskey, President, Electronic Industries Association.

American Electronics Association (witness to be supplied).

Charles R. Carlisle, Vice President, St. Joe Minerals Corporation on behalf of the Group of 33; accompanied by Stanley Nehmer, President, Economic Consulting Services, Inc. and Peter Feller of McClure & Trotter.

Panel: Antidumping and Countervailing Duty Laws

Richard O. Cunningham, partner, Steptoe & Johnson.

Charles O. Verrill, Jr., partner, Patton, Boggs & Plow.

Peter O. Suchman, partner, Sharretts, Paley, Carter & Blauvelt.

Noel Hemmendinger, senior partner, Arter Hadden & Hemmendinger.

George Burns, President, Consumer Products Division, SCM Corporation.

Panel: Dispute Settlement under Section 301, Trade Act of 1974

Richard R. Rivers, partner, Akin, Gump, Strauss, Hauer & Feld.

Julian B. Heron, Jr., Heron, Haggart, Ford, Burchette & Ruckert (witnesses to be supplied).

Charles F. Schill of Finnegan, Henderson, Farabow, Garrett & Dunner.

Thursday, December 17, beginning at 9:30 a.m.

Dr. Karl G. Harr, Jr., President, Aerospace Industries Association of America.

The Boeing Company (witness to be supplied).

Edward W. Stimpson, President, General Aviation Manufacturers Association.

Panel: Service Industries

Ronald K. Shelp, Vice President and Director, American International Underwriters Corporation; Chairman, Services Policy Advisory Committee; Vice Chairman, International Services and Investment Subcommittee, Chamber of Commerce of the United States.

Joan E. Spero, Vice President, Corporate Strategic Planning, American Express Company.

Peter G. Finnerty, Vice President, Public Affairs, Sealand Investment Industries, Inc.

Richard J. Hesse, Associate, Harza Engineering Company; Chairman, International Engineering Committee; Delegate to International Engineering and Construction Industries Council.

(Insurance-witness to be supplied.)

(Banking-witness to be supplied.)

Leo Johnstone, Executive Vice President, Philips Petroleum Company on behalf of the Chemical Manufacturers Association.

David C. Garfield, President, Ingersoll-Rand Company; Chairman, Special Committee for U.S. Exports.

Doreen Brown, President, Consumers for World Trade; accompanied by Philip Trezise and Fred Sanderson, Members, Board of Directors, Consumers for World Trade.

Dr. Peter Nelsen, Chairman, Agricultural Trade Council.

Richard W. Wilcke, President, Council for a Competitive Economy; accompanied by Sheldon L. Richman, Director of Research, Council for a Competitive Economy.

Friday, December 18, beginning at 9:30 a.m.

Eugene L. Kilik, President, Tanners' Council of America.

Cheese Importers of America: Harold C. Steinke, Borden Foods; Bernard A. Trugman, Trugman Nash.

Panel: Wine Industry

Arthur H. Silverman, Washington Counsel, Wine Institute.

Robert P. Hartzell, Executive Vice President, California Association of Winegrape Growers.

M. R. Bescholoss, President, Condeo Flow Control Group; Chairman, International Trade Committee, Valve Manufacturers Association; accompanied by Malcolm F. O'Hagan, President, Valve Manufacturers Association.

Chairman GIBBONS. Good afternoon, ladies and gentlemen. We are having a very interesting and important debate on the House floor. I said here a little while ago, it never fails, every time we try to sit down and try to do business there is always another big operation going on in town.

But to me this is—and I think to our country—one of the most important things to do. International trade has grown tremendously in the last 10 years. As I recall a few years ago, just about 10 years ago, total international trade was about $40 billion a year; it is now $300 or $400 billion a year; it is now 13 percent of our gross national product, up from about 9 or 10 percent of our gross national product.

Many of the jobs in America and some of the best paying jobs in America are dependent upon international trade. Certainly, the farmers and the people that produce for the farmers of America—produce machinery, seed, fertilizer, insecticides—are vitally affected by all of this increase. That is not to say that we have done enough or that everything we are doing is right.

The purpose of these hearings is to give first the administration and then, second, the American general public an opportunity to comment completely and fully about what is American trade policy; what American trade policy should be; how the program is administered and how should it be administered.

We are here to look at our fortunes as well as our failures. We are here to try to see in what way we can improve the operation of our international trade policy.

As I have said on many occasions, my personal goal is to open up markets, not just the markets in America but the markets throughout the world on a reciprocal basis. I feel that by doing that we can live in a better world, one in which our standard of living and everyone's standard of living will rise and we will have access to the fruits of each others' labors.

We will start this private sector phase of the hearing with Mr. Edmund Pratt.

Before we start with Mr. Pratt I want to say that we will start again tomorrow morning at 9:30. I am sure all witnesses understand that their entire statements will be placed in the record, they may either read from them, read them in their entirety or summarize them, as they wish.

We will start in the afternoon on Monday. Unfortunately the chairman cannot be here on Monday morning, so we had to change the schedule to begin Monday noon, and we will continue as long as we need to. There is always the possibility—maybe a forlorn hope—that the Congress will complete its work by this weekend. If we do, of course there will be no hearing on Monday. But I believe that we will probably be here working on Monday.

Mr. Edmund Pratt is not a stranger to Government and certainly not a stranger to business. He is chairman of the board of the Pfizer Co.; he is also the chairman of the Emergency Committee for American Trade; he is chairman of the Advisory Committee for Trade Negotiations, and he is a member of the President's Export Council.

Mr. Pratt, we are very happy to have you here today and welcome you back to Washington. You may proceed as you wish.

STATEMENT OF EDMUND T. PRATT, JR., CHAIRMAN OF THE BOARD, PFIZER, INC.; CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE; CHAIRMAN, PRESIDENT'S ADVISORY COMMITTEE ON TRADE NEGOTIATIONS; MEMBER, PRESIDENT'S EXPORT COUNCIL; ACCOMPANIED BY ROBERT McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Mr. **Pratt**. Thank you very much, Mr. Chairman, and members of the Ways and Means Subcommittee on Trade. Thank you for having me here today to express some thoughts about U.S. trade policy on behalf of the Emergency Committee for American Trade, known as ECAT.

I am chairman of ECAT which is an organization of some 63 business leaders whose firms have extensive overseas business interests. In 1980, ECAT member companies had worldwide sales of nearly $600 billion and employed over 5 million people. I am also chairman of Pfizer, Inc., and Chairman of the President's Advisory Committee on Trade Negotiations, known as ACTN.

Rather than read the entire formal statement submitted to you, I will summarize it for you in the next few minutes.

U.S. foreign economic policies are of vital interest to ECAT members. They profoundly affect our ability to function, both abroad and at home. Along with the Nation as a whole, ECAT companies have generally prospered under the U.S. historic commitment to and search for a worldwide economic order as free as possible from impediments to the international flow of goods and capital.

We ardently hope that the United States will continue its advocacy of expansionary trade policies which have served us all so well.

I would like to talk a little bit about foreign investment. I would think it sound to wager that this decade will see investment issues replacing traditional trade issues as the dominant international economic ones. Because of this I believe that international agreements are called for that will establish guidelines and rules for the furtherance and protection of international investment between and among both developed and developing countries.

The importance of international investment to the U.S. economy is often overlooked. From one-third to one-half of total U.S. exports go to the foreign affiliates of U.S. firms. That would mean that between $70 and $110 billion of U.S. 1980 exports of $221 billion went to those overseas affiliates of U.S. firms, and that between 3½ and 5½ million workers produced the U.S. exports that were shipped to these foreign affiliates.

Foreign direct investment also produces other economic benefits for the U.S. economy. In 1980, for example, the U.S. balance of payments benefited from U.S. foreign direct investment by a net of $24 billion.

To facilitate overseas business, both international and bilateral agreements on investment are necessary if we are to further international economic and political relations. Otherwise, we face the continued escalation of such national measures as performance requirements as a condition for the licensing of foreign investment by host countries.

Indeed, I believe that the use by governments of such devices as performance requirements and other investment incentives and disincentives threaten to unravel the whole fabric of international trade that has so painstakingly been put in place in the period since World War II.

Now, on general trade policy issues. As with restrictive investment measures, we also feel that the world will be poorer if countries resort to trade restrictive devices outside the framework of longstanding international trade rules. The theory of trade cooperation has been proved sound and practical, although its application is far from perfect.

I find it rather remarkable that the industrial democracies in these times of economic stress and uncertainty have adhered as well as they have to their international trade commitments. Storm clouds, however, are evident and are increasing.

Skillful management of the developing trade conflicts is necessary on the part of all participants. Miscalculations could lead to international economic warfare. I must also say, however, that we in ECAT are impatient with the lack of adequate progress on the part of many of our trading partners in living up to their international obligations.

The American business community is particularly concerned about the degree of commitment of Japan to the international trading system. Japan is the seller par excellence in the world marketplace, but it is not much of a purchaser of imported products that would compete with its domestic industries.

A free trading system can only be maintained with the full participation of its major participants. The system was not intended to be a philanthropic one.

ECAT supports the current effort of the U.S. Government to work out trade problems with Japan. We hope for positive results. If substantial progress is not made, then I fear that measures will have to be devised to rectify the situation. It is in everybody's interest that the need for such measures be avoided.

We have no clear picture of the manner in which the MTN agreements are being implemented. We believe that in the interests of all, however, that the GATT agreements be carried out efficiently and fairly.

Accordingly, we in ECAT welcome the meeting of GATT ministers of member countries that is scheduled for the fall of 1982. It provides an outstanding opportunity to take stock of where we are, to review performance under the new GATT trade codes, to evaluate the structure of the GATT itself for the purpose of determining its adequacy to deal with current and prospective problems concerning international trade and services, as well as merchandise, and to chart a cooperative course and program for the future.

Some specific trade issues. No. 1, transborder data flows.

Transborder data flows roughly refers to the flow of information across national boundaries. The information transmittal could be simply by mail, telephone, television, radio, telegraph, or by transmission from a computerized data bank in one country to another computer located in a different country.

What is disturbing is that countries are examining methods and means of imposing national barriers to the flow of information across their national borders. A number of governments restrict information flows. The rationales for their actions fall under the headings of privacy, national security, sovereignty, economic and political vulnerability, culture, economic protection, and government revenues.

If governments are to impose tariffs on information exchanges, to prohibit communications among computer data banks, to require duplicate data banks, to require domestic production of the means of communication, to restrict the use of national transmittal lines to national citizens and to undertake similar measures to restrict the flow of information internationally, then the conduct of business as we now know it will be severely and drastically changed. The cost of business will be increased, and the developing communications technology and production will be impeded.

AGRICULTURAL TRADE

The domestic agricultural community has been a stout ally of ECAT over the years in advocating and supporting trade-enhancing measures. We share its concern that foreign markets for U.S. farm goods are threatened not only by agricultural import restrictions abroad, but also by subsidies provided for agricultural exports by some of our trading partners. We hope that Ambassador Brock and his colleagues can contain the damage caused U.S. farmers by foreign export subsidies.

THE FOREIGN CORRUPT PRACTICES ACT

American businessmen have no quarrel with the Foreign Corrupt Practices Act's basic purpose of providing penalties for illicit payments to foreign government officials. Such payments are beyond the boundaries of acceptable business conduct.

What we do, however, have a problem with are the ambiguities of the Foreign Corrupt Practices Act, ambiguities that are substantially clarified in new Senate bill, S. 708.

A number of ECAT companies have estimated that the ambiguities in the Foreign Corrupt Practices Act were a factor in losses of business totaling over $2 billion.

The consequence of leaving the Foreign Corrupt Practices Act in its present form is a continuing loss of needed U.S. exports. I have a feeling that the $2 billion loss reported by some of our members is but the tip of a very large iceberg.

We are most hopeful that the House will take action on the FCPA in the near future.

EXPORT TRADING COMPANIES

ECAT firmly believes that Congress and the administration should take steps to enhance U.S. international competitiveness. Among measures we strongly support is legislation authorizing establishment of export trading companies. Hopefully, the House will take up trading company legislation in time for passage by this Congress.

EXPORT CONTROLS

ECAT recognizes and supports the need for export controls to protect U.S. national security. In recent years, however, we have publicly questioned the use and effectiveness of export restraints as a means of advancing desired political changes in the internal policies of other nations.

We therefore welcome the 1979 amendments to the Export Administration Act calling on the President to consider the adverse domestic economic consequences that would flow from export restraints imposed for public policy purposes.

We strongly support the requirements of the 1979 act concerning foreign availability determinations as a part of the export control process. It makes little sense to impose export restraints on U.S. products that are readily available from other sources—something that happens too often.

We certainly hope that the present administration will place heavy emphasis on U.S. exports as an important element of national security in developing its East-West trade policy.

EXPORT CREDITS

We are hopeful that President Reagan's economic recovery program will improve the economy sufficiently so that adequate funding might be authorized for the Export-Import Bank in future years. No matter what is done in other fields of export activity, financing will remain the key. Nearly all of our major foreign competitors are beneficiaries of generous export financing.

As one of our members recently stated, foreign governments subsidize export interest rates, knowing that they will pay out far less in subsidies than they will get back through increased tax revenues from the effect of higher levels of production and through reduced payout of social benefits because of the effect of higher levels of employment.

He also noted that while our companies are competitive with other companies, they cannot be expected to compete with governments.

It is clear that official U.S. export credit assistance is needed as are improved international export credit rules if the United States is to remain competitive in the world export markets. Every indication is that international competition will grow. We cannot afford to lose out.

EXPORT PROMOTION

In addition to serving as chairman of ECAT and ACTN, I recently became a member of the President's Export Council. I was concerned in reading a recent newspaper article reporting proposals of the Office of Management and Budget to drastically cut funds used to administer export promotion functions of the Commerce Department.

I certainly hope that Commerce Secretary Baldrige prevails on the President to disapprove major cuts in funding for export promotion. American exporters need help from their government, not neglect or hindrance.

TAX ISSUES

I will make a few comments on a number of tax issues of concern to ECAT.

First, the DISC. The DISC is under review both internationally and in the Treasury and OMB. The international review is in the GATT where it now appears that major parties are close to an agreement to have the GATT Council approve GATT panel reports that originally found DISC and certain European tax practices out of conformity with the GATT rules.

According to the administration, adoption of the reports will include agreement on principles that modify the premise on which the reports were based, so that GATT Council approval would not constitute a finding for or against the DISC. Loss of the DISC would result in a disincentive to exporting, which the 1971 DISC legislation was enacted to avoid.

We hope that the administration, in cooperation with Congress, will insure that if the DISC is to be modified, appropriate competitive export tax rules will replace it.

Looked at from a competitive viewpoint, DISC results in a deferral of U.S. tax on about 20 to 25 percent of export profits, which is a lot less than what other countries provide their exporters. It is therefore fair to say that the benefits of the DISC, while helpful, do not come near to offsetting the tax benefits provided our international competitors in the world marketplace.

SECTION 861

Thanks to your efforts, Mr. Chairman, and those of many of your colleagues on the Ways and Means Committee, the recently passed tax cut bill suspends for 2 years the section 861 requirements concerning R. & D. expenditures and requires a Treasury study to ascertain whether the suspension should be made permanent.

We are of course following the Treasury study with great interest and plan to comment on it when it is completed.

It goes without saying that for those companies among us, which are probably the strongest competitive edge that America has in high technology, an arrangement which would continue the suspension of the 861 requirements on R. & D. is absolutely critical. If not suspended, we would actually be encouraging our companies to switch research operations to other countries in the world, which is certainly not what we want to do.

POSSESSIONS CORPORATIONS—SECTION 936

To assist the economic development of Puerto Rico and other possessions, Congress legislated section 936, which basically recognizes Puerto Rican income tax exemptions by waiving U.S. income tax on the tax exempt income. A large number of investments have been made in support of U.S. Government policy as incorporated in the section 936 provisions.

Indeed, most of these investments probably would not have been made absent that legislation.

We are concerned with reports that consideration is being given to either eliminating or modifying section 936, in large part because of the search for Federal revenues. This would be patently unfair, especially if done retroactively, to those who have invested in possessions corporations.

The economic development of U.S. possessions would be adversely affected at a time when Federal grants and aid programs are being drastically curtailed in their territories.

THIRTY-PERCENT WITHHOLDING TAX

The 30-percent U.S. withholding tax imposed on interest earned by foreign purchasers of U.S. bonds is an impediment to U.S. citizens who would like to borrow funds from abroad, particularly from the Eurodollar market. Foreigners are reluctant to lend to U.S. borrowers since they have to pay the U.S. withholding tax on their interest earnings.

H.R. 4618, a bill introduced by Congressmen Gibbons and Conable, will eliminate the 30-percent withholding tax on interest earned by foreign holders of U.S. financial instruments. We urge its expeditious passage by the Congress.

THE RIBICOFF AMENDMENT

Another tax issue of concern to us is the Ribicoff amendment that denies DISC, foreign tax credit, and so-called deferral provisions to income earned through cooperation with foreign boycotts. The Ribicoff amendment was enacted prior to the basic antiforeign boycott provisions of the Export Administration Act. We urge elimination of the Ribicoff amendment.

This would considerably simplify matters for U.S. citizens in the conduct of their overseas business affairs through getting rid of conflicting statutes, interpretations, and regulations. Its elimination would in no way diminish the U.S. commitment to discouraging U.S. firms from cooperating with foreign boycotts.

THE UNITARY TAX METHOD

The basic objection we have to the unitary method is that it sweeps foreign income into the State's tax base in a mechanial, and arbitrary and irrational manner.

We appreciate the introduction of H.R. 1983 by Congressmen Conable, Archer, Frenzel, Jones, and Martin. The bill would require those States which tax foreign income to do so in the same manner as does the Federal Government. Passage of this bill will alleviate a growing and arbitrary tax burden and, incidentally, will help to encourage foreign investment in our country.

Again, thank you very much for providing the opportunity of presenting our views on some of these current trade issues. I would be delighted to try to answer any questions you may have.

[The prepared statement follows:]

Statement of Edmund T. Pratt, Jr., Chairman, Emergency Committee for American Trade

Mr. Chairman and distinguished members of the Ways and Means Subcommittee on Trade, thank you for having me here to express some thoughts about United States trade policy on behalf of the Emergency Committee for American Trade (ECAT). I am Chairman of ECAT, which is an organization of 63 business leaders whose firms have extensive overseas business interests. In 1980, ECAT member companies had worldwide sales of nearly $600 billion and employed over five million people. I am also Chairman of Pfizer Inc., and Chairman of the President's Advisory Committee on Trade Negotiations (ACTN).

United States foreign economic policies are of vital interest to ECAT members. They profoundly affect our ability to function both abroad and at home. Along with the nation as a whole, ECAT companies have generally prospered under the United States historic commitment to and search for a worldwide economic order as free as possible from impediments to the international flow of goods and capital. We ardently hope that the United States will continue its advocacy of expansionary trade policies which have served us all so well.

FOREIGN INVESTMENT

As advocates of an open international economic order, we are greatly concerned with a number of developments at home and abroad. Paramount among them are actual and proposed unilateral or bilateral measures intended as solutions to problems that have international consequences. I have in mind such measures as narrow trade restrictions as well as measures increasingly being utilized by governments that affect investment. Indeed, I would think it sound to wager that this decade will see investment issues replacing traditional trade issues as the dominant international economic ones. What troubles me is that I am not sure just how they can or will be handled. Such existing international institutions as the GATT have had little experience in dealing with investment issues. While treaties of Friendship, Commerce and Navigation provide some protection, and while prospective bilateral investment treaties provide hope, I believe that an international agreement is called for that will establish guidelines and rules for the furtherance and protection of international investment between and among both developed and developing countries.

The importance of international investment to the U.S. economy is often overlooked. Official studies and private estimates show that from one-third to one-half of total U.S. exports go to foreign affiliates of U.S. firms. That would mean that between $74 billion and $110 billion of U.S. 1980 exports of $221 billion went to those overseas affiliates. Assuming that there are about 50,000 domestic jobs associated with each $1 billion of U.S. exports, then simple arithmetic shows that between 3.7 million to 5.5 million workers produced the U.S. exports that were shipped to the foreign affiliates of American companies. that's a lot of jobs.

Foreign direct investment also produces other economic benefits for the U.S. economy. Comprising the single largest overseas market for U.S. exports, overseas subsidiaries of U.S. firms return vital profits to the United States. In 1980, for example, the United States balance of payments benefited from U.S. foreign direct investments by a net of $24 billion. Without these remitted earnings from foreign investments, the United States balance of payments would be in catastrophic condition.

A number of prospective international codes concerning investment and the conduct of business abroad are under discussion in the United Nations and its subsidiary bodies. Voluntary guidelines for foreign investment have been developed in the Organization for Economic Cooperation and Development—the OECD. While the OECD guidelines apply to investment activity among the advanced countries, they are not officially recognized by the developing countries where many of the investment problems are to be found.

The transnational business codes being considered in the United Nations and its bodies do not at the moment hold great promise for establishing acceptable international rules providing reciprocal rights and obligations. The U.N. discussions tend to be confrontational in nature and in large part are based on a desire of the economically lesser-developed member countries of the United Nations for a "New International Economic Order" in which the advanced countries would be expected to provide unrequited benefits. While the desire is understandable, so is the reluctance of the advanced countries to agree.

There are ways, however, in which the developmental and trade needs of the lesser-developed countries can be served. Among them would be agreements on effective international investment rules as well as satisfactory bilateral investment agreements that would establish reciprocal rights and obligations. Both international and bilateral agreements are necessary if we are to further international economic activity and to maintain relative harmony in our foreign economic and political relations. Otherwise, we face the continued escalation of such national measures as performance requirements as a condition for the licensing of foreign investments by host countries.

One has only to look to our northern and southern borders to see the problems that investment performance requirements can cause. In Canada, for example, a certain percentage of Canadian ownership is required for certain investments. In order to manufacture automobiles in Mexico, one must agree that 70 percent of the value of the automobile will represent value-added in Mexico. Such measures are common throughout the world. What is disturbing is that their use is rapidly growing. Unless brought under some sort of control, investment decisions internationally are increasingly going to be based on governmentally mandated distortions that are essentially uneconomic in nature. Political divisiveness will follow, and we will all be the poorer. Indeed, I believe that use by governments of such devices as performance requirements and other investment incentives and disincentives threaten to unravel the whole fabric of international trade that has so painstakingly been put in place in the period since World War II.

One effective measure utilized by the United States to facilitate overseas investments by U.S. firms in less-developed countries has been the Overseas Private Investment Corporation (OPIC). Insurance and guarantee programs against political risk similar to those of OPIC might well be utilized by such international financial institutions as the World Bank and the International Monetary Fund. We in ECAT urge our government to examine the feasibility of this idea. Administration of an investment insurance and guarantee program by responsible international bodies could greatly facilitate foreign investments in the developing countries, as well as trade with them.

Not all of our foreign investment problems are to be found in the developing regions of the world. The European Communities, for example, are considering such matters as the Vredeling proposal which could subject such common business decisions as plant locations anywhere in the world to the scrutiny and approval of labor unions. This proposed rule and others require the careful and continued attention of our government.

GENERAL TRADE POLICY ISSUES

As with restrictive investment measures, we also feel that the world will be poorer if countries resort to trade restrictive devices outside the framework of long-standing international trade rules. The theory of trade cooperation has been proved sound and practical, although its application is far from perfect.

The challenges of dealing with government subsidies to trade, the problem of unfair pricing, the search for workable mechanisms to allow countries to deal with sudden surges in imports of specific products, and the fairness and effectiveness of systems for adjusting to import competition, all are unfilled gaps in the application of the policy of trade cooperation. While many of these challenges were dealt with in the Multilateral Trade Negotiations, a good deal remains to be done. It is our contention that the "doing" has to be in a multilateral and not a bilateral or unilateral context.

The temptations are great for governments to handle a variety of domestic economic problems through unilateral restrictions on imports, through the provision of government grants or subsidies of various sorts to stimulate exports, or through bilateral arrangements. To the extent that such actions are pursuant to internationally agreed mechanisms, then trade retaliation may be avoided. To the extent that they are not, then retaliation is likely with the consequence that the protective action to save one man's job may cost another his through loss of an export market.

I find it rather remarkable that the industrial democracies in these times of economic stress and uncertainty have adhered as well as they have to their international trade commitment. Stormclouds, however, are evident and are increasing. Trade conflicts are with us. Conditions could worsen. Damage could extend beyond trade. Each unilateral action taken in trade adds to the possibility of a falling-out in vital issues. With so much at stake, a lessening of unity is dangerous enough, a break in that unity brought about by new trade restrictions should never be allowed to happen.

Skillful management of the developing trade conflicts is necessary on the part of all participants. Miscalculations could lead to international economic warfare. Job security is appropriately at or near the tip of all national economic agendas. Job preservation through import restrictions that do not accord with international rules, however tempting to national authorities, should be avoided for the preservation of one man's job will most likely be at the expense of another's. There is no national benefit in such circumstances. There indeed could be national disadvantage in that economic inefficiencies might well follow the import restriction, leaving the overall economy a little poorer.

Having said this, I must also say that we in ECAT are impatient with the lack of adequate progress on the part of many of our trading partners in living up to their international obligations. The American business community is particularly concerned about the degree of commitment of Japan to the international trading system. A mighty power economically, Japan appears unwilling to support the very openness of its economy domestically that it depends on internationally for the export of its merchandise. As a result, Japan is the seller par excellence in the world marketplace, but it is not much of purchaser of imported products that would compete with its dometic industries.

The fact is that Japan's industrial power depends greatly on the maintenance of a liberal world trading order. Nonetheless, Japan appears to many of us to be in violation of the rules of that very order through the process in which it develops and maintains its industries.

This is all particularly troubling to the members of ECAT who have supported the development of a free trading system. We see the Japanese approach to and use of the system as a threat to its very existence. A free trading system can only be maintained with the full participation of its major participants. The system was not intended to be a philanthropic one.

ECAT supports the current effort of the U.S. government to work out trade problems with Japan. We hope for positive results. If substantial progress is not made, then I fear that measures will have to be devised to rectify the situation. It is in everyone's interests that the need for such measures be avoided.

While trade with Japan is uppermost in most of our minds, the practices and policies of other of our trading partners also are of concern to us. A keen disappointment to ECAT members, for example, was the European Communities' unwillingness in the recent Multilateral Trade Negotiations (MTN) to conclude an international "safeguards" code whereby all signatories in effect would have re-pledged themselves to follow GATT rules when considering the imposition of import barriers. We strongly recommend that the U.S. government again take up its pursuit of a safeguards code for without one we can expect a bevy of import restrictions based on purely domestic shortrun considerations and not on considerations that take into account enforceable international obligations.

We have no clear picture of the manner in which the MTN agreements are being implemented. One matter that we are aware of, however, has to do with a prospective purchase of a computer by the British government in apparent disregard of the GATT Procurement Code. We hope that the British will reconsider and open the proposed purchase contract to competitive bidding. Otherwise, the procurement code will be severely compromised and a bad precedent will have been established.

We believe it in the interests of all that the GATT agreements be carried out efficiently and fairly. Accordingly, we in ECAT welcome the meeting of GATT ministers of member countries that is scheduled for the fall of 1982. It provides a wonderful opportunity to take stock of where we are, to review performance under the new GATT trade codes, to evaluate the structure of the GATT itself for the purpose of determining its adequacy to deal with current and prospective problems concerning international trade in services as well as in merchandise, and to chart a cooperative course and program for the future.

Because we so strongly feel the need for the development and enforcement of rules that will facilitate international investment, we recommend to the Congress and to United States government officials that the United States look carefully at the GATT to see whether it can be fashioned to undertake responsibility as the primary international economic institution not only for facilitating trade but for services and investment as well. It is a difficult but a necessary task. The effort to try to avoid unnecessary protectionism must be supplemented by an effort to develop sound international rules that are adhered to.

SOME SPECIFIC TRADE ISSUES

Transborder data flows

I opened my statement with comments noting the importance of foreign investment issues. Another rapidly developing issue with strong protectionist overtones is that dealing with restrictions on transborder data flows—a term sufficiently technical sounding to lull one into sleep. But it is a term expressing a reality that is with us and that a great deal more will be heard about in the years ahead.

Transborder data flows roughly refers to the flow of information across national boundaries. The information transmittal could be simply by mail, telephone, television, radio, telegraph or by transmission from a computerized data bank in one country to another computer located in a different country. A number of countries feel that the holders and communicators of information internationally are in a position of power that could be used against their national interests through controlling the flow of knowledge. Thus, countries are examining methods and means of imposing national barriers to the flow of information across their national borders.

An excellent report on transborder data flows entitled "International Information Flow: Forging a New Framework" was issued by the House Committee on Government Operations on December 11, 1980. I commend it to you. It documents actions taken and being taken by a number of governments to restrict information flows, and it notes a number of reasons offered by governments for their restrictive actions. The rationales fall under the headings of privacy, national security, sovereignty, economic and political vulnerability, culture, economic protection, and government revenues.

The principal and immediate objective of the U.S. government is to try to prevent other countries from establishing restrictions on the flow of information across international boundaries. U.S. government officials are discussing the issue in the OECD and in agencies of the United Nations. A set of voluntary guidelines designed to prevent abuses in the international transmission of privacy data has been worked out in the OECD, and a large number of U.S. firms have endorsed these guidelines.

We in ECAT have begun a program of educating ourselves on the many facets of the transborder data flow problem in order to be in a position to advise our government on courses of action. If governments are to impose tariffs on information exchanges, to prohibit communications among computer data banks, to require duplicate data banks, to require domestic production of the means of communication, to restrict the use of national transmittal lines to national citizens, and to undertake similar measures to restrict the flow of information internationally, then the conduct of business as we now know it will be severely and drastically changed. The cost of business will be increased and the developing communications technology and production will be impeded.

We urge the Trade Subcommittee together with other interested congressional committees to study the issue. We in business would be delighted to cooperate with the Congress and the Executive Branch in developing responses to transborder data flow restrictions.

Agricultural trade

While ECAT is primarily an organization of manufacturing and service firms, we do have members involved in the production and trade of agricultural products. The domestic agricultural community has been a stout ally of ECAT over the years in advocating and supporting trade-enhancing measures. We share its concern that foreign markets for U.S. farm goods are threatened not only by agricultural import restrictions abroad but also by subsidies provided for agricultural exports by some of our trading partners. The export subsidies for farm products provided by the European Communities, for example, is an immediate and severe problem. The subsidies are cutting into our agricultural sales in a number of third countries. Furthermore, the E.C. is now considering greater use of export subsidies to dispose of surplus agricultural products.

We hope that Ambassador Brock and his colleagues can contain the damage caused U.S. farmers by foreign export subsidies. Taking the European Communities to the GATT on wheat flour is a difficult step but hopefully one that will prove of benefit to our farmers.

The Foreign Corrupt Practices Act (FCPA)

We in ECAT applaud the Senate for its recently passed amendments to Foreign Corrupt Practices Act embodied in S. 708. The amendments basically provide a clearer and more precise definition of actions that trigger criminal liability and a clearer standard of accountability under the Act's accounting provisions.

American businessmen have no quarrel with the FCPA's basic purpose of providing penalties for illicit payments to foreign government officials. Such payments are beyond the boundaries of acceptable business conduct. What we do, however, have a problem with are the ambiguities of the FCPA—ambiguities that are substantially clarified in S. 708. In a survey of ECAT members, we found that a number of them refused to seek business contracts because they were uncertain whether certain business practices were prohibited by the Act. While in few cases could it be demonstrated that the FCPA ambiguities were the sole cause of losses of business, a number of companies estimated that the ambiguities were a factor in losses of business totaling over $2 billion.

Although the Senate has completed action on S. 708, the House has yet to conduct legislative hearings on a companion House bill, H.R. 2530. The bill is before the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce. Two oversight hearings have been held by the Subcommittee to help educate the members on the need for the FCPA and on current enforcement practices. We are most hopeful that the House will take action on FCPA in the near future. The consequence of leaving the FCPA in its present form is a continuing loss of needed U.S. exports. I have a feeling that the $2 billion loss reported by some of our members is but the tip of a very large iceberg.

Export trading companies

ECAT firmly believes that Congress and the Administration should take steps to enchance U.S. international competitiveness. Among measures we strongly support is legislation authorizing establishment of export trading companies. We appreciate Senate passage of S. 734 earlier this year which would authorize establishment of Export Trading Companies. Regrettably, companion House measures have been dormant in the House Judiciary and Banking Committees for a number of months. Hopefully, those Committees will take the trading company bills up in time for their passage by this Congress.

Export controls

ECAT recognizes and supports the need for export controls to protect U.S. national security. American business is willing to forego market opportunities where it is determined that the sale of products or of technology would clearly be detrimental to our national security. In recent years, however, we have publicly questioned the use and effectiveness of export restraints as a means of advancing desired political changes in the internal policies of other nations. Several ECAT members have commented that while foreign governments use foreign policy as a means to advance exports, the United States tends to do the reverse.

Americans who depend on the export sector are as concerned as any of our citizens about human rights in other nations, about discrimination against other Americans, about protection of the environment, about consumer safety, about curbing terrorism and about similar worthwhile goals of American policy. The export sector of our economy, however, increasingly appears to be the chosen instrument for the pursuit of these goals.

We, therefore, welcomed the 1979 amendments to the Export Administration Act calling on the President to consider the adverse domestic economic consequences that would flow from export restraints imposed for public policy purposes. We strongly support the requirements of the 1979 Act concerning foreign availability determinations as a part of the export control process. It makes little sense to impose export restraints on U.S. products that are readily available from other sources—something that happens too often.

We await with great interest the results of the Administration's study of East-West trade policies. We certainly hope that the new Administration will place heavy emphasis on U.S. exports as an important element of national security in developing its East-West trade policy.

Export credits

We are hopeful that President Reagan's economic recovery program will improve the economy sufficiently so that adequate funding might be authorized for the Export-Import Bank in future years. No matter what is done in other fields of export activity, financing will remain a key. Nearly all of our major foreign competitors are beneficiaries of generous export financing. The French and Japanese governments, in particular, are aggressive in export financing. To illustrate part of the problem, the French government assists in financing 30-35 percent of total French exports, the Japanese, 35-40 percent, and the United States, 6 percent.

As ECAT testified earlier this year, there would be little problem if all governments either refrained from financing exports or agreed to a common set of financing rates and rules. Such is not the case. Recognizing this, the United States has long sought to negotiate international export credit rules that would subject exporters of all nations to harmonized credit practices. As is well known, this U.S. objective has been only partly realized.

We believe it essential that the negotiations for common export financing practices be continued. Eximbank's current budget restraints will inhibit its ability to match foreign concessional export financing. This undoubtedly will result in a lot of lost export business with consequent losses of jobs, profits, and government revenues.

In light of this, we commend Congressman Stephen Neal and Senator John Heinz for introducing H.R. 3228 and S. 868 that would establish a special fund to match concessionary export credit practices of our trading partners and, thereby, help ensure that our exporters do not suffer competitive inequalities in the market place. ECAT certainly believes that need for such a fund will become a necessity if some of our trading partners persist in what amounts to an export credit war. We cannot afford to do less domestically and expect our industries to continue to be strong contenders in the world markets.

As one of our members recently stated, foreign governments subsidize export interest rates knowing that they will pay out less in subsidies than they will get back through (1) increased tax revenues from the effect of higher levels of production and (2) through reduced payout of social benefits because of the effect of higher levels of employment. He also noted that "while our companies are competitive with other companies, they cannot be expected to compete with governments." A number of other business leaders have made the same point to me, emphasizing that it is not only their exports that directly suffer because of inadequate Eximbank financing but also the sales of the many thousands of suppliers of parts to them.

It is clear that official U.S. export credit assistance is needed as are improved international export credit rules if the United States is to remain competitive in world export markets. Every indication is that international competition will grow. We cannot afford to lose out.

Export promotion

In addition to serving as Chairman of ECAT and of ACTN, I recently became a member of the President's Export Council, which has the assignment of recommending measures to promote U.S. exports. I was appalled on reading a recent newspaper article reporting proposals of the Office of Management and Budget to drastically cut funds used to administer export promotion functions of the Commerce Department. I understand that one of the proposals contemplates curtailments of the newly constituted Foreign Commercial Service.

I certainly hope that Commerce Secretary Baldridge prevails on the President to disapprove major cuts in funding for export promotion. Our national balance of trade is expected to worsen in the next couple of years. There is no time to be cutting back on export promotion. Indeed, I would hope with the support of the Congress to impress on the President the importance of raising export promotion to the status of a major economic component of the Administration's economic program.

It has to be realized that exports compete in *foreign* markets where conditions often are vastly different than in the United States and where foreign governments provide every possible assist to their producers in meeting the competition. American exporters need help from their government—not neglect or hindrance.

TAX ISSUES

Although treated here as the final item in our ECAT statement, the taxation of both foreign source and domestic income by the Treasury critically affects our ability to compete internationally. While Treasury taxes income on a global basis, its use of the foreign tax credit does avoid double taxation of profits earned overseas and its practice of generally taxing dividends earned abroad only after they are remitted to the United States gives effect to the basic U.S. tenet that taxes should be paid only on income received by the taxpayer. Without these two basic provisions, there would be no U.S. private overseas investment.

There are a number of tax issues of immediate concern to the members of ECAT. Among them are the DISC, Section 861, possessions corporations, the 30 percent U.S. withholding tax on interest earned by foreign purchasers of U.S. bonds, the Ribicoff amendment concerning foreign boycotts, and the manner in which a number of states tax the income of U.S. overseas subsidiaries. I will make but brief comments on each of the issues.

DISC

The DISC is under review both internationally and in the Treasury and the OMB. The international review is in the GATT where it now appears that the major parties are close to an agreement to have the GATT Council approve GATT panel reports that originally found DISC and certain European export tax practices out of conformity with the GATT rules. According to the Administration, the adoption of the reports will include agreement on principles that modify the premise on which the reports were based so that GATT Council approval would not constitute a finding for or against the DISC. The agreement also presumes that the key parties to the agreement—the United States and the European Communities—will not for a period of time complain about the tax practices included in the four GATT panel reports. The contentious tax issues would thereby be removed from the GATT Council's agenda where they have been for a number of years. Despite the prospective U.S.-E.C. agreement just noted, however, it is conjectural as to whether countries not party to that agreement will bring formal complaints about the DISC to the GATT.

The Treasury-OMB reviews of the DISC are of immediate concern to us since they appear to be based on the dual questions of whether export tax incentives are needed and of whether the elimination of DISC would not considerably enhance Federal revenues.

We have no hesitation in answering that the DISC is vitally needed. Its absence would result in a disincentive to exporting, which was the original reason for legislating the DISC in 1971. If the DISC is to be modified, we recommend that appropriate competitive export tax rules replace it.

We have two answers to the second question. If static economic analysis—the kind predominantly used by Treasury and OMB—is used, then the elimination of DISC would of course enhance Treasury revenue. If market analysis is used, we believe that Treasury would lose revenue because of fewer exports and fewer jobs.

Looked at from a competitive viewpoint, DISC results in deferral of U.S. tax on about 20-25 percent of export profits, which is a lot less than what most other countries provide their exporters. Many European countries for example, either do not tax export profits at all or tax them at extremely low rates. It is, therefore, fair to say that the benefits of the DISC, while helpful, do not come near to offsetting the tax benefits provided our international competitors in the world marketplaces.

Section 861

Section 861 of the Internal Revenue Code requires the apportionment of certain expenses incurred in the United States to income received by a U.S. parent company from its overseas subsidiaries. Since foreign governments generally do not recognize such apportionments as deductible business expenses on the part of the subsidiaries, the result is an increase in tax costs to the U.S. corporation because of the consequent diminution of the foreign tax credit.

The 861 apportionment requirements are particularly troublesome in the research and development area. Section 861 requirements discourage R & D investment in the United States and encourage companies to consider moving portions of their R & D to other countries. No other countries follow this United States practice. In fact, many offer tax and other incentives for R & D.

Thanks to your efforts, Mr. Chairman, and those of many of your colleagues on the Ways and Means Committee, the recently passed tax-cut bill suspends for two years the Section 861 requirements concerning R & D expenditures and requires a Treasury study to ascertain whether the suspension should be made permanent. We are following the Treasury study with great interest, and plan to comment on it when completed.

Possessions corporations—Section 936

To assist the economic development of Puerto Rico and other U.S. possessions, Congress legislated Section 936, which basically recognizes Puerto Rican income tax exemptions by waiving U.S. income tax on the tax exempt income. A large number of investments have been made in support of U.S. government policy as incorporated in the Section 936 provisions. Indeed, many of these investments might not have been made absent the legislation.

The benefits to Puerto Rico and to other U.S. possessions have been many. Changes in Section 936 could serve to unravel an economic development program that has been a marked success.

We are concerned with reports that consideration is being given to either eliminating or modifying Section 936, in large part because of the search for federal revenues. This would be patently unfair—especially if done retroactively—to those who have invested in possessions corporations. It would also be disastrous to Puerto Rico and the other U.S. possessions whose economic development would be adversely affected at a time when federal grants and aid programs are being drastically curtailed in their territories. Elimination of Section 936 would certainly require the federal government to develop alternative means of assisting the possessions. These means might include additional governmental transfer payments to citizens in the possessions, which would be very costly and far less preferable to the jobs presently provided by the private sector.

Thirty percent withholding tax

The 30 percent U.S. withholding tax imposed on interest earned by foreign purchasers of U.S. bonds is an impediment to U.S. citizens who would like to borrow funds from abroad, particularly from the Eurodollar market. Foreigners are reluctant to lend to U.S. borrowers since they have to pay the U.S. withholding tax on their interest earnings. To get around this, a number of U.S. firms have established Netherland Antilles finance subsidiaries to borrow in the Eurodollar market, thereby avoiding the U.S. withholding tax. This practice would be made unnecessary by H.R. 4618, a bill introduced by Congressmen Gibbons and Conable that would eliminate the 30 percent withholding tax on interest earned by foreign holders of U.S. financial instruments. We commend you, Chairman Gibbons, and your colleague, Congressman Conable, for introducing this bill, and we urge its expeditious passage by the Congress.

Ribicoff amendment

Another vexatious tax issue of concern to us is the Ribicoff amendment that denies the DISC, foreign tax credit and so-called "deferral" provisions to income earned through cooperation with foreign boycotts. The Ribicoff amendment was enacted prior to the basic anti-foreign boycott provisions of the Export Administration Act. It contains definitions and provisions different than those in the basic statute. Treasury regulations implementing the Ribicoff amendment also conflict with Commerce regulations implementing the basic antiboycott provisions.

We urge elimination of the Ribicoff amendment. Its elimination would in no way diminish the U.S. commitment to discouraging U.S. firms from cooperating with foreign boycotts. Its elimination, however, through eliminating conflicting statutes, interpretations, and regulations will considerably simplify matters for U.S. citizens in the conduct of their business affairs.

The unitary tax method

The unitary method employed by a small but growing number of states in taxing the foreign income of U.S. companies is also of major concern to nearly all ECAT members. The basic objection we have to the unitary method is that it sweeps foreign income into the state's tax base in a mechanical and arbitrary manner. The unitary method is also of great concern to foreign companies who are reluctant to invest in states utilizing the unitary method.

We appreciate the introduction of H.R. 1983 by Congressmen Conable, Archer, Frenzel, Jones, and Martin. The bill would require those states which tax foreign income to do so in the same manner as does the Federal Government. Passage of this bill will alleviate a growing and arbitrary tax burden.

There are a number of other tax problems that we think require correction. For example, we believe that Congress should change foreign investment "loss recapture" rules that go beyond their intended purpose, and should simplify rules fragmenting and complicating the foreign tax credit.

Again, thank you for providing me the opportunity of presenting our views on some current trade issues. I would be delighted to answer any questions.

Chairman **Gibbons**. Thank you for a very fine statement and a very comprehensive statement.

Among the things that you mentioned was the restriction on data flows. Does the United States participate in this kind of restriction?

Mr. **Pratt**. Not at the present time. It is a new area of concern that has just surfaced here in recent weeks and months. There are a number of foreign countries who are beginning to talk about it and are threatening it. Generally the U.S. policy has been to be concerned about it and to try to participate in trying to stop it from getting under way.

Chairman **Gibbons**. You mentioned that you had no clear idea, and I guess none of us have any clear idea, as to how well the new GATT rules are being implemented.

One of the things that we had hoped would work in the implementation and the monitoring of the GATT rules is that there would be a close cooperation between those of you who engaged in overseas commerce and the Government in trying to collect data.

I realize it would have to be collected in a circumspect manner from you in most cases, to really monitor how well these mutual and reciprocal types of opening of markets is being carried on.

Is there anything, to your knowledge, in our Government now that is seeking to collect data from you all as to what is being done? You know, it would be impossible for us to station—and probably not even desirable—to station people overseas working constantly to police other people's activities, the activities of foreign governments and foreign businesses.

But those of you who are in business and in foreign countries obviously can see the impact of their practices and their laws. Is this data being collected on a systematic basis by our Government?

Mr. **Pratt**. Well, not systematically, I suspect, but I think the general understanding of the business community is, as you have suggested, that if we are aware of violations of this it certainly is our responsibility and to our advantage to bring it to the Government's attention.

The two groups that I belong to, the two advisory groups, the President's Export Council and the Advisory Committee for Trade Negotiations have as one of their responsibilities attempted to try to operate in a rather informal way to bring this kind of information to the attention of those Federal executives who are most concerned with this area. So, that is going on.

I do not have any further recommendations on any better way to do it. Up until now we have not gotten a clear picture. We are alert to it. We sense it is a responsibility of ours and through these devices we do have a channel to feed it in.

I might ask Bob McNeill who is here with me today—Bob is the executive vice chairman of ECAT—if he has anything to add to that. Bob?

Mr. **McNeill**. I really do not, Mr. Chairman. There is one matter of great concern, however, to a number of our ECAT members at the moment and that is a prospective purchase by the United

Kingdom Government of a major computer for use, I believe, in its postal system.

The concern is that the United Kingdom will not allow competitive bidding for that particular contract but will restrict the bidding to a domestic British concern. This, if it goes that way, would be the first significant violation of the international GATT procurement code that I am aware of.

It is this kind of information that Mr. Pratt was referring to. As business becomes aware of it, it does pass it on to our Government officials. We just recently, for example, sent Ambassador Brock a letter to that effect on this particular contract.

But I am not aware, as the chairman is not aware, of any systematic manner in which the Government is collecting this information.

Chairman GIBBONS. Well, it would seem to me that it would be advisable to have one place in our Government that on an aggressive basis monitors the implementation of the MTN codes. I guess USTR is doing it, but I thought maybe I would pick up more information.

Mr. PRATT. We are having a meeting of the Advisory Council with the STR next week and we will certainly give it further discussion at that time.

Chairman GIBBONS. I think that would be very helpful because if one company knows it is being discriminated against, the word ought to be passed around if it knows the agreements are not being implemented. That collection of data would enable us to put appropriate corrective steps in operation. I think the Government has got to aggressively collect that information.

You mentioned—and I am sorry to hear, I only learned today about—the move to cut back the export functions of the Department of Commerce.

I know that in this time of budget austerity there is a tendency to cut everybody back. But I would hope that the business community would be vocal in explaining to our Government that while the business community can do a lot and is the principal arm by which we function overseas, that we need those people in the Department of Commerce, particularly this new agency in the Department of Commerce that is trying to create an American governmental presence overseas representing the business community. We just do not have one that we are satisfied with yet.

So, I am glad that you are sensitive to that and I hope that you in your official position will let our Government know that we have to look very closely at that matter.

Mr. Frenzel, would you like to inquire now?

Mr. FRENZEL. Thank you very much, Mr. Chairman.

Mr. Pratt, we are delighted to have you here. I think it is fair to say that any friend of McNeill's is a friend of the committee. So, you come highly recommended.

On page 7 of your testimony you indicate that if we are not successful in the negotiations with Japan, measures—which you leave unspecified—will have to be taken. Would you care to give us an idea what kind of measures you are thinking about, or did you purposely leave them unspecified?

Mr. **Pratt**. Well, obviously they could go as far as you have to go until you finally might get back to protectionism and retaliation for actions abroad.

We would hope that would not have to happen. Certainly, the ultimate step would be equivalent denial of market availabilities to the Japanese here; that is the final threat we have to hold over their heads. I guess that has been done in inference in some of the negotiations.

That is the kind of thing that ECAT has always stood strongly against. On the other hand, it was a rather strong statement for somebody at ECAT to make, to even suggest that such measures would be considered. I think the situation with regard to the Japanese and some of our major industries is of a serious enough nature that we have to consider stronger measures, whatever is required, in order to bring that into better balance.

Mr. **Frenzel**. I am sad to say that I must agree with you. Certainly, the chairman and I are the least enthusiastic about indulging in countermeasures of any kind. I personally am extremely reluctant to create one of these Frankensteins that is going to activate the problem all over the world. I have been just very nervous about them because I do not know how you turn them off once you start them.

But our friends in Japan have refused to heed the warning and so perhaps something will happen.

The chairman was interested in your suggestion about continuing the Foreign Commercial Service. People on this committee were quite active in working with the Carter administration when the reorganization was effected that created the Foreign Commercial Service.

I must say, personally I have been very disappointed with the development of the Service. I agree with you that we ought to try it some time, but I suggest we have not yet. Are you aware that the Service is doing some good work somewhere because we have difficulty detecting the effect of that service?

Mr. **Pratt**. Well, I would be somewhat more optimistic than that. Yes, without giving you a lot of details, I am generally aware that over the brief period of time it has been in effect—my company for example has had one or two examples where we had some good responsive service in a foreign country from that organization.

In principle we believe it makes sense. We would agree also that it has not moved as aggressively or as fast as we would like to have it do. I suspect in the current time of budget cutting that it is going to be even more difficult to see the steps taken as aggressively as we would like.

We would like to see the Foreign Commercial Service retained. I guess everybody feels the same way about their issues. Budget cuts in areas where the return is likely to be far greater than the expenditure ought to be handled a little differently than some of the others. This could be one of those.

That is the same way we feel about the threatened cutback in the export promotion activities of the Department of Commerce.

It is not very sound business practice to cut expenditures that are very likely to return far more than the expenditure in return to the Government and to the Nation. Here would be a case where, properly done, I believe these services could do that, and, therefore, the commercial service ought to be supported.

Mr. **Frenzel**. I agree with you. My difficulty is that we took that jurisdiction away from the State Department, shifted it over to Commerce, and then we find that Commerce has hired a guy from the State Department to hire the new people who have become part of the Foreign Commercial Service, most of whom—so far at least—were the Foreign Service Officers who we thought were not doing the job.

Mr. **Pratt**. I guess I would react to that. I do not believe there is an absolutism in any organizational matter. As a matter of fact, I have come to that conclusion over many years. But there are some things that tend to be better than others.

It would work, I suppose, either way. In the past, when you went to our Embassy in a foreign country for help on a commercial matter, quite often you tended to find that the people there were so concerned about the problems of affairs of state between our countries that if you were trying to rock the boat on a commercial matter they were inclined to tell you to go away. It was troublesome to them.

I think to me that was the most significant thing about this split out. You would have somebody there to whom the commercial interest was the key interest, and he would not be considering that to be more of a problem than one of his other responsibilities. I think that is a factor that probably is to me decisive in this.

I think in principle, given the time to develop, it ought to be better that way.

Mr. **Frenzel**. I share your interest in the service and I hope that ECAT and others will try to keep some pressure on the Department.

Mr. **Pratt**. We have done that.

Mr. **Frenzel**. To move that thing along because I must say that I have been keenly disappointed by them.

One of the items that was not listed under special matters in your testimony was the subject of export licensing.

Early in our discussions here we had a representative of the Commerce Department telling us how they had speeded up the process. We now get disturbing reports that the process has again bogged down and that we have many of them going past the statutory limits.

I wonder if you would care to comment on licensing.

Mr. **Pratt**. I think I might ask Bob McNeill who has probably been closer to that than I have, if he has some feedback on that. Bob, do you?

Mr. **McNeill**. Mr. Frenzel, I really do not. I do not detect any significant speedup in the time in which these things are decided, although that is the stated intent. I think things are very much as they have been in the past.

Mr. **Frenzel**. Fine. If you hear any change either way, I know you will be communicating it to us.

Finally, I appreciate your statement on the DISC. I would like to see it improved. I intend shortly to introduce legislation to go to a true territorial tax system and I would certainly agree that we should not fuss, of course, with DISC until we have something superior to take its place.

I thank you again for your testimony, I appreciate it.

Mr. Pease. Thank you very much.

Chairman Gibbons. Mr. Bailey?

Mr. Bailey. Thank you, Mr. Chairman.

Mr. Pratt, I would like to thank you for your statement. I am sort of new to the trade area and am just learning.

You made a reference to financing of exports. What do foreign countries do? You talked about competition with government policies and that kind of thing. What do foreign countries do, do they finance interest rates or financial packages?

Most of the things that I have read indicate that when it comes to some of the larger, especially high-technology, large international, capital-intensive kinds of arrangements in the power field, for example—nuclear power is a perfectly good example—that many, many times the financial arrangements really make the difference, and we are talking about financed interest rates, subsidized interest rates. I do not know if that is true or not.

Can we compete? What is that situation, can you tell me more about it, or do you have some suggestions?

Mr. Pratt. Well, it is exactly as you have described it.

Mr. Bailey. You mean that foreign governments do subsidize the financial package?

Mr. Pratt. Yes. I was going to give you an example—not from my own company because we are not in the kind of business where we have these big ticket items—of the kind you mentioned, power stations.

In similar discussions between business people and Members of Congress I have heard people from Westinghouse and others describe prospective sales involving hundreds of millions or billions of dollars where U.S. merchandise was the low bid and the preferred technology but where the U.S. interest rates were the highest. The foreign supplier came in with deals with interest rates half or two-thirds of our interest rates plus no interest rate payments at all, perhaps, for the first 5 years. Such spectacular financing deals are not uncommon abroad.

So that even though the buyer clearly acknowledged that our bid, our price bid and our quality, was superior they went to the foreign competitor because on a dollar-and-cents basis today's interest rates, particularly the costs of financing, are such a significant part of the cost of the deal.

So, that is precisely what they are doing, and the government does that by subsidizing the financing charges that the foreign supplier makes.

Mr. Bailey. And you said something that especially caught my ear, that in some of these cases—I think I was reading about a situation over there in Indonesia, for example, it had to do with the purchase of some turbine technology, turbines and things like that—that inferior technology, in that case at least, was supposedly purchased because of the dollar-and-cent impact of the financial package.

So, I guess you could not defend some of these things on the grounds of any international concept of comparative advantage or even productivity.

I honestly do not know enough about them, I am just in the process of learning about them.

In our various trade relationships and international trade agreements, are there allowances made for subsidization. I mean, we are always saying we do not have any teeth in the agreements or anything, we do not have any good ways to enforce them.

But are there any kinds of prohibitions against these kinds of things? They certainly do not do much for free trade; do they?

Mr. **Pratt**. No; they do not. There are export credit rules on this, and I will ask Bob McNeill in a minute to comment on them in more detail.

The export credit rules are very difficult to police. Of course, that is why we have the Export-Import Bank which was created to be able to make available more competitive subsidized rates to our exporters.

Mr. **Bailey**. Sir, is not the Export-Import Bank—and I do not want to take too much time—but does not the Export-Import really finance at competitive interest rates? We are not talking about a subsidized interest rate; are we?

Mr. **Pratt**. No, the Export-Import Bank does have capacity to make more attractive financing arrangements than would be made otherwise, that is its only reason for being.

Bob, would you want to comment in more detail?

Mr. **McNeill**. Congressman, the Export-Import Bank lends its funds at the cost of the money to it, that is at the cost of borrowings from Treasury, plus a margin. Up until about a year or so ago, the Export-Import Bank under this formula was able to earn money each year.

The cost of money to the Export-Import Bank now is more than the rate it charges on its loans, so that there is that element of subsidy in it.

Mr. **Bailey**. That is true, but the point is, I read a package, a French package, I think it was 2½ percent. In the Export-Import Bank, what percentage rates are we talking about? I remember it was 7, 8, 9 percent, that kind of financing. That is no longer true, is it?

Mr. **McNeill**. No, Ex-Im is lending now, I think, between about 12¾ to 14¾ percent.

Mr. **Bailey**. And what are some of the foreign packages being financed at?

Mr. **McNeill**. The U.S. Government just concluded a negotiation at the OECD in Paris with our industrial trading partners. There was an agreement there that the floor on export credits would be, I think, 10¾ percent. So that the French and others, I think, are lending presently at that rate where we are lending at a rate 2 to 4 percentage points higher than that.

Mr. **Bailey**. And on a huge, large project over many years that of course makes all the difference, that is a tremendous sum.

Mr. **McNeill**. Yes, that makes all the difference. But another problem at the moment is that the Export-Import Bank does not have enough funds to lend at any rate of interest.

Mr. **Pratt**. Even at that difference it is better than our exporters could arrange through any other source. We can usually stand some difference in interest between ourselves and our foreign competitors, so even if you cannot eliminate it, if you can narrow it, sometimes that is helpful.

Mr. **Bailey**. I want to thank you, I do not want to take too much time, but the Export-Import Bank was at least to some degree saved from the "Midnight Rider," you know that. You are aware of the fight we had on the floor on that issue. Luckily we got things turned around. Apparently somebody gave the administration some correct information and we got it turned around in a day or two.

Mr. **Pratt**. It is a very important "plus" for American exporters.

Mr. **Bailey**. For high technology energy items and things of that sort it may be crucial to America's technology wave, as a matter of fact.

Mr. **Pratt**. Precisely.

Mr. **McNeill**. Mr. Bailey, without extending the conversation too long, the 2½ percent interest rate that you referred to a while ago, results from a financing practice that we are not able to do but that a lot of our trading partners do, and that is to mix commercial and aid credits together.

Mr. **Bailey**. You mean that happens? I was right; there are packages of that sort?

Mr. **McNeill**. Yes; it does happen. Our European trading partners, for example, will provide financing for a total project, a part of which will be at commercial rates and a part of which will be at concessional foreign aid rates. So, you might have half the package at 2½ percent which is the aid component, and 10¾ as the other commercial component.

We are not in a position, generally, in our Government to be able to do that. Therefore, on a lot of very large contracts we lose out because of the financing disadvantages.

Mr. **Bailey**. Those words "free trade" have a lot of funny faces to them.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Mr. Pease?

Mr. **Pease**. Thank you very much, Mr. Chairman. Mr. Pratt, we appreciate your testimony. I think you will find a lot of people on this subcommittee who are sympathetic to the sorts of points you have been making today.

The timing of your visit today is very appropriate in relation to a question that I have and that really dovetails with what Mr. Bailey raised a few minutes ago.

As it happens, we have on the floor of the House today the foreign aid appropriations bill for this fiscal year. It will be the first time in some years that we have a foreign aid appropriations bill.

My understanding is that President Reagan earlier this year asked for lending authority for the Eximbank of about $440 million for this fiscal year. The President came along in September and asked for a 12-percent across-the-board cut in everything, and the Appropriations Committee has responded by reporting out a bill that will come to the floor today with a figure of about $390 million in new lending authority.

My understanding is that the Eximbank is already committed to about $390 million for this fiscal year. So that if that bill passes as it came out of committee, the bank in fact will be unable to make any new loans at all through this fiscal year, through next September 30.

I am told there will be an amendment on the floor to increase the lending authority for the Eximbank back up to what the President originally asked for, $440 million, which will be a $50 million increase—do I have my figures right?

Mr. McNEILL. You have the figures about right, but you have the period in the wrong place, it is $3.9 billion and $4.21 billion.

Mr. PEASE. Thank you. So, it is $500 million, the increase we are talking about. Thank you for that correction.

Now, as I understand it, that $500 million increase will have an impact on the deficit—at least on paper—of about $50 million. The dilemma some of us are in is whether to vote for that increased lending authority for the Eximbank even though it goes contrary to the President's recommendations and would increase at least the paper deficit by another $50 million.

Would you have any advice for us under those circumstances? We like to share the agony.

Mr. PRATT. Well, I understand obviously the squeeze that you are in and that the administration is in. I think in general it is fair to say that the business community has strongly supported the overall program of President Reagan in trying to change the direction of our society and to bring our economic matters back into greater order. To do that is very difficult.

It is very difficult to pick out a total program. Everybody has one or two things they want to argue with. My own judgment is, leaving aside for a minute the difficulty of trying to fit something like this in the total, it has always seemed to me that the Export-Import Bank was a bad place to try to save money.

I mentioned in passing in an answer to an earlier question that an American company lost a big order in a foreign country because of the inability to offer competitive interest rates.

The company, I believe it was Westinghouse, did a number of studies which they believe showed conclusively that for every dollar of interest rate subsidy that the U.S. Government would have to pay in order to enable Westinghouse to get that business, it would have gotten back $9 in increased revenue due to greater taxes on greater business, and more people would have been put to work in this country.

I think whether it is $9, or $5, or whatever it is, I believe that it is true that the money spent on the Export-Import Bank is an investment which will return a handsome return to this country

Now, the problem is, it may not do it the same year you make the investment. But it seems to me that it is pretty shortsighted for us to get to the point where we cannot make that kind of investment.

So, my own personal feeling is we ought to increase the Export-Import funds as much as we possibly can, even more than the figures that we are talking about if some way could be found to do that.

Mr. **Pease**. And you would say that regardless of the short-term impact on the Federal deficit.

Mr. **Pratt**. That is where it gets more difficult. I have to admit, I am not sitting here balancing all these figures. So, that is the hard part.

In our company, of course, we have to plan ahead to stay alive. American industry has been criticized for not looking far enough into the future—I think unfairly so. We make most of our decisions on the basis of committting funds up front for returns to be achieved in years ahead. That is the way we operate.

Yes, I would do that. I think it would be better to cut other things and not cut the Eximbank, or even to increase it, at least as far as enhancing the long-term economic strength of the country is concerned.

Mr. **Pease**. Would you feel similarly about the export promotion functions in the Department of Commerce, that they also ought to be exempt from any general cutting of the Federal budget?

Mr. **Pratt**. It is hard to say anything could be actually exempt. I would make the same argument there, although I am less aware of the direct implication of those functions because my own company has not been too much involved in them. But I do understand from a number of companies that they are valuable services and do help us get foreign business. So, therefore the same argument would apply, yes. On what priority would be hard for me to say.

I am inclined to be even more strong in my support of the Export-Import Bank, but I am not as sure about the other.

Mr. **Pease**. You mentioned before that we do face serious competition from other nations which are subsidizing their financing packages much more than we are. What would be your recommended response to that? One possibility would be to try to match those subsidies, for us to go to 2½-percent packages as well.

Another one would be through international negotiations to try to put those into the same category as other trading violations.

Another one, I suppose, would be unilateral action on our part to penalize somehow those countries that do engage in export financing subsidies.

Do you have a recommendation for us?

Mr. **Pratt**. Well, there I would think in the first place, like Bob McNeill mentioned earlier, we do have certain negotiations that put limits on that subsidization—I think 10¾ percent is the figure—so that thing has been done. Now, the difficulty there is that interest rates vary so much that that figure which might be effective at one time is not at another. It is probably not the only answer.

I think the other answer, probably the most practical other answer, is that after having set reasonable limitations and guidelines like that, we have to be flexible enough to respond and be competitive.

I think one of the proposals made in one of the bills was to establish a certain additional amount of money in the nature of a "war chest" fund to be available in case interest rates and competitive conditions change. If we begin to face aggressive competitive situations which are still within the rules and yet lower than we can offer, we should have funds available to be able to match those.

I suspect that is the best answer.

Mr. **Pease**. You are assuming those would be Federal Government funds?

Mr. **Pratt**. Yes, I am.

Mr. **Pease**. Thank you very much.

Mr. **McNeill**. Mr. Pease, there is a bill that Steve Neal introduced, H.R. 3228, and there is a companion bill that Senator Heinz introduced in the Senate. Both are common bills that would establish a $1 billion war chest. It would be an authorization, in the form of an authorization rather than an appropriation.

The funds in that $1 billion could be used not to finance exports but to subsidize interest rates in instances where, say, the French or others, are offering a rate that we cannot match. That money would be used strictly to cover that interest rate differential. That is why it is called a war chest fund. It would be used for that particular purpose.

That appears to me to be a rather feasible approach without a very significant budgetary effect. Instead of financing $1 billion worth of goods, you might with that $1 billion be able to finance $30 to $40 billion worth of exports, since you would just be financing the interest rate difference.

Mr. **Pease**. I see. Thank you very much.

Chairman **Gibbons**. Mr. Vander Jagt?

Mr. **Vander Jagt**. I have no questions, I just want to thank the witnesses.

Chairman **Gibbons**. Thank you very much, Mr. Pratt. We have a vote on now, so the committee will recess, vote, and be right back. Our next witness, when we get back, will be Mr. Harry Freeman, senior vice president, American Express Co.

[Whereupon, a short recess was taken.]

Chairman **Gibbons**. Our hearing will resume with testimony from Mr. Harry L. Freeman, senior vice president, American Express Co., and Chairman of the Commercial Policy Committee of the U.S. Council of the International Chamber of Commerce.

We welcome you here, sir, and you may proceed as you wish.

STATEMENT OF HARRY L. FREEMAN, SENIOR VICE PRESIDENT, AMERICAN EXPRESS CO.; CHAIRMAN, COMMERCIAL POLICY COMMITTEE, U.S. COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE; ACCOMPANIED BY JOSEPH GAVIN, WASHINGTON LIAISON OFFICER, U.S. COUNCIL, INTERNATIONAL CHAMBER OF COMMERCE

Mr. **Freeman**. Thank you very much, Mr. Chairman, I am delighted to be here today. I would like to offer my entire statement for the record.

Chairman **Gibbons**. Yes, sir, it will be received in its entirety and you may proceed as you wish.

Mr. **Freeman**. Thank you. I really want to divide my comments into three rather brief portions.

First, a general overview; second, some comments on structural changes in the world and U.S. economy; and third, specifically what this committee might address itself to at this time.

I would like to introduce Joe Gavin from the staff of the U.S. Council of the International Chamber of Commerce, who is with me here today.

Trade policy and the growth of protectionism are among the most vital issues confronting both the United States and international policymakers.

I welcome the initiative of your committee, Congressman Gibbons, in holding these very extensive hearings. I have read through the witness list and it is very ambitious—I cannot think of anybody that you are not having from the world of trade and I think that is very commendable.

In the past decade, economic relations have been characterized by turbulence and growing conflict. This will be much more prevalent in the 1980's. It has been rough in the 1970's, and the 1980's will get tougher and tougher.

The collapse of the Bretton Woods monetary system; the havoc caused by the rise in the price of oil; the call by the developing world for new international economic order—these have been the signals of significant structural changes which have taken place in the world economy.

Much of the current economic conflict centers on difficulties in, and over adjustment to, these structural changes. Central to those differences are serious pressures for protectionism and growing conflict over international trade.

I would add that recent projections of the growth of trade in the next few years are negative—negative growth throughout the world which will just exacerbate the structural changes that have occurred.

One of the most critical political as well as economic issues of the 1980's will be whether we can find ways within a liberal trading regime to adjust to these new trade conditions, or whether international economic relations in the 1980's, as in the 1930's, will disintegrate into a destructive struggle for the world's goods and services.

The underlying reality of today's international political economy is increasingly different from that of the postwar Bretton Woods period. That reality has been changing in a number of ways: Powerful and changing market forces; the inevitable end of a period in which the U.S. dominated the world economy; and emergence of the era of greater interdependence.

The result of all of these changes has been a significant shift in world economic power. I brought a few charts with me which I would like to show.

The first chart is a very simple line chart—U.S. exports as a percent of world trade. U.S. exports have gone down from 15.5 percent to around 12 percent. While it sounds small as a percentage, that is a very major decline.

That is not a problem, that is reality as the world economy becomes more distributed and the U.S. powers lessen.

The other thing that has occurred in the United States and throughout the world is the restructuring of national economies. If we use the United States as a case, the United States has very good statistics on this.

This chart shows composition or GNP in 1979, the size of the manufacturing sector, the size of the agicultural sector, and the size generally of what is called the service sector.

You can see that in GNP terms we are saying that an overwhelming majority of our GNP has now changed to services. Manufacturing is 23.4 percent. Services vary by measurement. We are talking about 65, 66 percent—roughly two-thirds of the U.S. economy is now in services.

Agricultural is just down above three percent. This will continue to change. Services will continue to grow. This is not limited to the United States. Japan has the second-largest service sector in the world at around 60 percent of its GNP, and is continuing to further develop their services.

If one reads the white papers coming out of their Ministry of International Trade (ITI) they will tell you the way they are going—information industries; computers, hardware and software. They say, "Stop us if you can, we are out there to get it."

So, Japan as a major exporter of goods, steel and cars today is shifting very rapidly to services.

This picture of GNP in the United States is not appreciated by all.

On our exports I want to concentrate on services because I think—while I agree with everything Mr. Pratt had to say—that very few people talk about the huge, very rapidly growing role that services play.

This chart is the result of a study commissioned by Commerce and the Trade Office. It shows that at least $60 billion in exports come from the export of services. The Commerce Department thought the figure was very low. It is very hard to develop these statistics and they only indicate minimum figures.

Within these categories are some very interesting figures. For example, predictably banking is over $9 billion; direct insurance—very predictable. Transportation is very predictable at around $14 billion.

What is surprising is when one realizes the United States is a major exporter of temporary employment companies. Manpower, Inc., Kelly Girls, and so forth, happen to be as large outside the United States as inside the United States. This is a fact that is little appreciated.

Education services for profit are a major exporter for the United States. Another one, and one of my favorites, is that the United States is a major exporter of both oilfield services and also of hospital management services—that is one of our major exports.

When you think about, what do we export? Cars, grain, and so forth. I am not trying to attempt to lessen the importance of goods we export. I am just trying to suggest that we have massively growing exports of services. This is running into a lot of problems.

On the balance-of-payments chart, trade of goods and services, services has been a positive contributor for balance of payments, while goods are unfortunately negative.

Therefore, last year we had roughly a balance in our balance of payments. Therefore we need to try to improve our goods exports and also try to maintain and improve our export of services. One cannot do without the other.

Most of our trade discussions and trade laws focus on goods. Few, if any, focus on maintaining the services trade surplus. We need both to prosper.

This next chart goes to our own export sector for the United States. I believe you mentioned in your opening remarks, Mr. Chairman, that we have gone from just over 5 percent to around 11 percent export of our GNP, again a massive change in what Americans are doing in the export field. There are many more companies, big, medium, and small companies, who are involved in the export sector.

So, I think the net effect of what I am trying to suggest is that, first, the 1980's will start rough and get rougher.

Second, trade will probably be going down in absolute terms around the world, even in nominal dollars, so that the projections of negative growth are understated when you take inflation into account.

Third, therefore you will have increasing forces for protectionism both in the developed countries and in the developing countries.

Fourth, we are going to have increasing conflict between countries over trade issues. I will avoid the phrase "trade wars" because that has very nasty connotations.

The last point is that the restructuring of economies where goods have declined in relative importance means that many of the trade disputes of the eighties will not only be in traditional areas—that is to say steel, agriculture, and other goods—but also will be over services such as information services, communications, and higher technology-types of services; transportation; insurance; banking; health care; and so forth. We have to make sure that both goods and services are given the best help we can to try to protect a reasonably free trading world.

My last major point today, Mr. Chairman, is what can this committee do at this time with respect to these problems. I really have just a few things. First, I think these hearings are extremely important, they do shed light and foster ideas.

Second, we are now moving toward a major GATT Minsterial meeting which is now scheduled for the late fall of next year, 1982.

The last GATT Ministerial launched the Tokyo round and 10 years before that there was a Ministerial meeting which launched the preceding trading round. So, this is a very major event and in January the tentative agenda for that GATT meeting late in 1982 will be set. Negotiations are starting now as to what subjects should be covered.

We think that your committee should be very much involved in discussing with the administration, with the Trade Office, the State Department and the Commerce and Agriculture Departments as to just what is in the interest of the United States and should be included on the agenda for the GATT meeting.

We are talking about trade issues for the next 10 years, and we have the utmost confidence in Bill Brock, Secretary Baldrige, and the other members of this administration. But we also think there is a role for the Congress, for this committee and its counterpart committee in the Senate.

So, we think you ought to really get involved at this time and in these weeks ahead in thinking about and advising the administration on just what should be discussed for the U.S. point of view at the GATT Ministerial—this is the big show coming up. The big show in the sense that we are starting the type of process that resulted in the Tokyo round.

The second thing we suggest is that you look seriously in this Congress at legislation which we and others are presently developing to revise the trade laws to allow the United States to respond more effectively to these changing structures—this is to say to revise the Trade Act of 1974 to adequately address services as well as goods.

The Trade Act now does include services as well as goods, but all of the language was drafted—and this is no criticism—was really drafted with a "goods" mentality, and that has become inadequate. The service sector really did not squeak much at the time and now it is beginning to, and the figures really reflect that.

So, what must be done—and we and others are doing this right now—is to go line by line and say, "How can we bring services on a parity with goods?" We think that legislation should be ready for your consideration within a matter of weeks.

So, those are really three things—the hearings today; your involvement in the preparations for the GATT Ministerial; and revision of the Trade Act of 1974 with respect to services—which we think your committee can do now to prepare for the very great difficulties we see ahead.

Those are my prepared remarks, sir.

[The prepared statement follows:]

STATEMENT OF HARRY L. FREEMAN, SENIOR VICE PRESIDENT, OFFICE OF THE CHAIRMAN, AMERICAN EXPRESS CO., ON BEHALF OF THE U.S. COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE

Mr. Chairman, distinguished members—my name is Harry L. Freeman, Senior Vice President, Office of the Chairman of American Express Company. I am pleased to be here today on behalf of the United States Council of the International Chamber of Commerce (ICC). The ICC is recognized throughout the world as the spokesman for international business. The ICC works in an advisory capacity with a wide range of intergovernmental organizations such as the United Nations, the General Agreement on Tariffs and Trade (GATT), the International Monetary Fund (IMF), and the Organization for Economic Cooperation and Development (OECD). Trade policy and the growth of protectionism are among the most vital issues confronting both U.S. and international policymakers. I welcome the initiative of Congressman Gibbons and this Committee in holding extensive hearings on this subject.

In the past decade economic relations among developed countries have been characterized by turbulence and growing conflict. The collapse of the Bretton Woods monetary system, the havoc caused by the rise in the price of oil, the call by developing countries for a new international economic order—these have been the signals of significant structural changes which have taken place in the world's economy.

Much of the current economic conflict among developed countries centers on difficulties in and differences over adjustment to those changes. Central to those differences are serious pressures for protectionism and growing conflicts over international trade. Indeed, one of the most critical political as well as economic issues of the 1980s is whether the developed countries will find ways to adjust to these new trade conditions or whether international economic relations in the 1980s, as in the 1930s, will disintegrate into a destructive struggle for the world's product.

STRUCTURAL CHANGES IN THE INTERNATIONAL ECONOMY

The underlying reality of today's international political economy is increasingly different from that of the post-war Bretton Woods period. That reality has been changed by a combination of several factors: powerful market forces; the inevitable end of a period in which the United States dominated the world economy; and the emergence of the era of interdependence.

Market forces have been especially significant in encouraging and speeding industrial expansion in Europe and Japan, and in many formerly agrarian parts of the "Third World". The result has been a significant shift in world economic power.

Chart 1: Although the United States remains the world's most powerful economy, the United States has declined from the status of an economic superpower to that of an economic great power. This chart depicts the U.S. percent of total world trade. As you can see, the U.S. share has fallen substantially over the past decade from 15.2 to 12 percent of total world trade.

The U.S. share of total world production has also declined. Thirty years ago the U.S. accounted for 56 percent of the non-Communist world's industrial production; today it accounts for 41 percent. At the same time, the countries of Western Europe—especially West Germany—rebuilt rapidly after World War II, and have returned to international economic prominence. Japan has moved even more rapidly to become the world's third largest economy after the United States and the USSR. For example:

Thirty years ago West Germany accounted for 4 percent of the non-Communist world's industrial production and Japan for 1 percent; today West Germany is slightly below 9 percent and Japan is slightly above.

Twenty-five years ago West Germany's share of world trade was 7 percent, and Japan's was under 3 percent; today the shares are respectively 11 and 7 percent.

One of the most significant structural changes has been the gradual and generalized decline of traditional heavy industries and the emergence of service economies in the developed countries. In the last 20 years these countries have come to specialize where they are strongest: banking, insurance, electronics, information processing, telecommunications—in short, the service and high-technology industries. Well over half of America's GDP and three-quarters of U.S. private-sector employment now come from the service sector.

Chart 2: The value added to the U.S. gross national product (GNP) by service-producing industries in 1979 (the latest year of complete figures) totaled 66 percent of total value.

Chart 3: A study of service exports commissioned by the Departments of State and Commerce, and the U.S. Trade Representative indicates that U.S. service exports were about $60 billion in 1980. What is interesting is the wide range of components of these exports. They include some industries most of us would be surprised to learn are export earners—for example, education services, health services and temporary employment.

Chart 4: This chart shows that the favorable services trade balance has grown dramatically. At the same time the United States has suffered a serious deficit in its merchandise trade balance. In 1980, services were responsible for the first overall surplus in the balance of payments position of the United States since 1976. In the past decade, earnings derived from services expanded at a 19 percent average annual rate—twice the pace of the previous decade.

As traditional industries have declined in the North, they have flourished in several of the more advanced developing countries. The NICs—the newly industrialized countries—now account for over one-third of world trade in clothing, one-fifth in textiles, and over one-sixth in other consumer goods. One World Bank study estimates that by the end of this decade the LDCs will account for 38 percent of all manufactured imports into the developed countries, up from 25 percent today and 11 percent in 1963.

As a consequence of the oil price rises of the 1970s, another phalanx of rapidly developing countries has emerged: the major oil exporters. OPEC members have rapidly increased their share of world trade, from 7½ percent in 1973 to 16 percent today, and they are using their oil wealth to build up their economic bases.

The growth of Europe, Japan and the NICs as well as of the United States has been led by exports, spurred by multinational investment and financed through international capital markets. The result is a truly interdependent world economy. National economies are increasingly interconnected and vulnerable to external events.

Chart 5: Perhaps most significant in its political impact is the growing interdependence of the United States. As this chart illustrates, in 1960 5 percent of the U.S. GNP was derived from trade. By 1980 that figure had more than doubled in real terms—to 11 percent. Today the United States exports 23 percent of its agricultural production and imports 40 percent of its petroleum.

One form of interdependence, less familiar now, will be crucial in the 1980s: the interdependence created by telecommunications and information. The rapid development and merger of telecommunications and computing technologies has revolutionized international business, media, government, and national defense. The world is now linked by electronic highways carrying a constant stream of impulses around the globe. These highways and these impulses have become the lifeblood of the international economy. Multinational business, international finance, international trade are all dependent on the new and highly interdependent telecommunications and information systems.

The restructuring of world production and political power and the growth of interdependence combined with the fluidity and rapidity of change have created uncertainty and malaise about where the world economy is headed—a sense of loss of control. This malaise in turn opens the door to pressures for protectionism.

The U.S. economic and political position has changed. Americans now often view the United States as impotent—unable to control the external environment. The result is growing political pressure for protectionism and desire for isolation from the disruptions of the world economy.

DANGEROUS ALTERNATIVES TO ADJUSTMENT

The challenge of the 1980s is to develop the political capability to adjust to these massive economic and political changes. While I tend to be an optimist, I see many signs that developed countries are seeking not to adjust but rather to protect themselves from their environment. Protectionism is an easy and perhaps natural reaction. Furthermore, the current economic crisis—inflation and slow growth—and the political insecurity that has accompanied it allow less room for flexible and cooperative responses to new developments. As a result, defensive, nationalistic policies abound.

Trade problems within and between the United States and Western Europe are increasingly dealt with competitively instead of cooperatively. Europeans and Americans are now locked in serious disagreements over steel industry problems, the Multi-Fiber Arrangement, export subsidy policies, and East-West trade. U.S.-Japanese economic relations are also in rough water, with America's particular grievances focused on Japan's export competition with the domestic steel, auto, and other sensitive sectors. European-Japanese trade problems are also heating up.

Trade problems confronting industry and agriculture have been the most prominent. However, lurking behind these "traditional" trade issues are the so-called "invisible barriers to invisible trade"—the non-tariff barriers that impede trade in services, such as insurance, banking, data processing, and international information flows. These are the very sectors which are developing most rapidly. Unless recognized and managed soon as a key element of trade policy—these barriers have the potential to disrupt a free and open trading environment and to undermine the vitality of the international economy.

Some aspects of North-South economic discussions are also increasingly belligerent. The inability to come to some agreement on global negotiations, conflicts over the proper role of the IMF and the World Bank, protectionist measures directed at LDC-manufactured exports, and declines in aid have soured relations between industrial and developing countries.

Finally, there are signs that today's relative economic openness could be supplanted by the coalescence of regional economic blocs as countries seek to establish special trading relationships.

Historical experience indicates that the costs of economic nationalism far outweigh its benefits. The inability of the Western countries to coordinate national economic policies in the 1930s lengthened and deepened the Depression. Given the levels of interdependence today a failure to coordinate could be more serious in the 1980s than in the 1930s.

Protectionism, by artificially subsidizing a losing cause, simply postpones (and perhaps exacerbates) the inevitable—and retaliation can make the results even more harmful. A new round of across-the-board protectionism would probably increase aggregate unemployment and inflation. Imports into industrialized nations replaced the equivalent of 850,000 jobs in 1976. But jobs gained through exports amounted to 2,400,000.

The LDCs—and especially the most industrial and oil-rich among them—are far too important to the American economy to become the victims of protectionism. American corporations have over $60 billion invested in the developing countries; American banks are owed over $100 billion by the LDCs; and American exports to the "Third World" are greater than exports to Western Europe and Japan combined. If we ignore their financial needs and exclude their exports we will be harming ourselves.

TOWARD EFFECTIVE ADJUSTMENT TO A CHANGING WORLD ECONOMY

The question is thus: how can nations adapt to the restructuring of the world economy—a process already underway, probably inevitable, and generally beneficial—without provoking a cycle of escalating economic tension and protectionism?

The U.S. Council of the International Chamber of Commerce (ICC) has done extensive work in this area. At a roundtable conference sponsored by the ICC in October, a series of principles were developed to address trade protectionism. Let me suggest some ways to encourage adjustment to the current economic situation and stem the present tide of protectionism.

1. There is an urgent need for new discussion or negotiation of trade policy issues within an international forum. In the interim, governments must be prepared to apply fully the multilateral system of trading rules embodied in the GATT. Difficulties in specific industries should be tackled through structural adjustment measures of a temporary nature.

2. The system of rules in the GATT must be strengthened. This will involve discussion of policies which have until now been regarded as "domestic", but which exert an increasing influence on international trade. Decisive action should be taken to conclude the multilateral safeguards negotiations. In addition, trade in services should eventually be subject to negotiated liberalization.

3. The development of effective adjustment assistance to affected workers and industries is a prerequisite to an open trading environment. Governments should not subsidize inefficiency; but they can and should help transform the structure of production in the direction of more efficiency.

4. Greater emphasis and higher priority must be given to solving the trading problems of the developing countries. In return, LDC's must accept the responsibilities that are incumbent as part of their new prominence.

5. Both the business community and government must be made aware of the need for an open trading system and the benefits derived. Hearings like these are essential to this process.

What does all this mean for the United States?

Recent and continuing changes in the structure of the international trading system necessitate new policy decisions to allow the United States to respond quickly and effectively to the changes. Our policies must also address significant changes which have taken place in the structure of the U.S. economy itself. The United States must take concrete action now to address a number of pressing trade issued. For example:

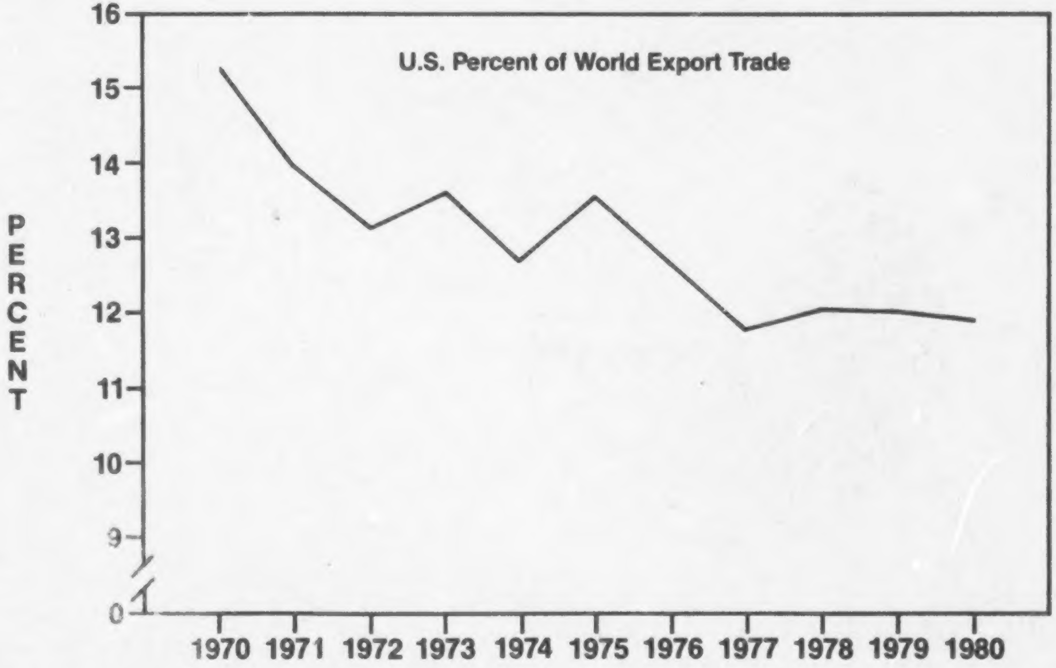
The GATT Ministerial scheduled for November 1982 offers the opportunity to address trade problems and protectionism in a pragmatic way. Congress should support Administration preparations for the Ministerial. Officials will be meeting next month to determine the agenda. Your committee should be prepared to contribute its thoughts.

U.S. trade laws must be made more responsive to the changing structure of the U.S. economy. I understand that legislation is being drafted to revise the Trade Act of 1974 in order to adequately address service sector needs. This committee should be involved in the development and passage of this legislation.

The growing importance of the service sector to U.S. economic performance must be recognized. Congress should give priority to the passage of the Service Industries Development Act, S. 1233 and H.R. 3848, which mandates the U.S. government to fully incorporate the service sector concerns in its policy development.

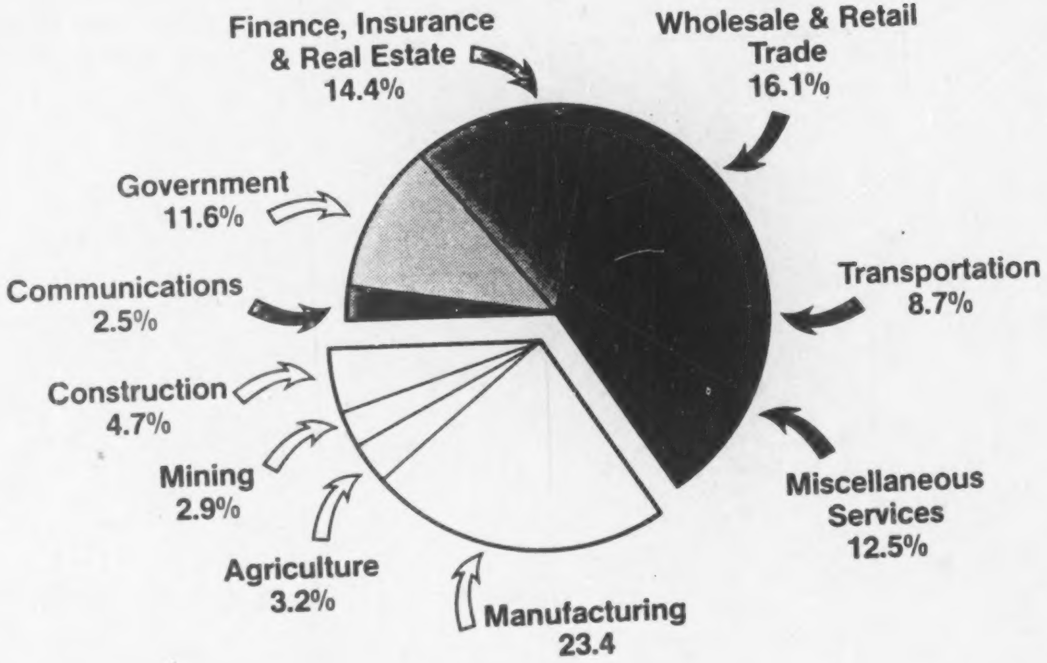
Thank you for your attention. I would be pleased to answer any questions.

U.S. EXPORTS AS A PERCENT OF TOTAL WORLD TRADE



Source: International Monetary Fund, International Financial Statistics

COMPOSITION OF GROSS NATIONAL PRODUCT
1979



Shaded Areas=Services

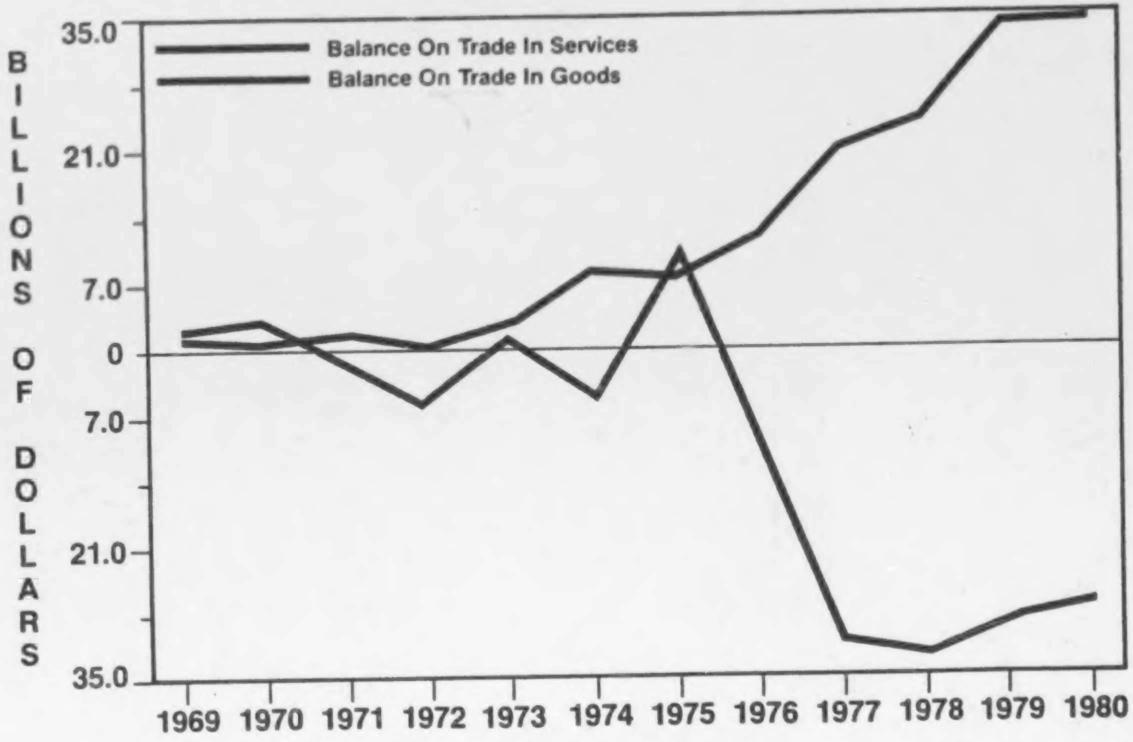
Source: U.S. Dept. of Commerce, Bureau of Economic Analysis

ESTIMATED FOREIGN REVENUES OF THE U.S. SERVICES SECTOR, 1980

SERVICE INDUSTRY	FOREIGN REVENUES (billions dollars)
Accounting	2.35
Advertising	2.05
Banking	9.10
Business/Professional Technical Services	1.07
Construction and Engineering	5.36
Education	1.27
Employment	0.55
Franchising	1.26
Health	0.27
Information	0.60
Insurance	6.00
Leasing	2.35
Lodging	4.60
Motion Pictures	1.14
Tourism	4.15
Transportation	13.93
Subtotal, 16 service industries	56.05
Miscellaneous financial services, communications, etc.	4.00 (est.)
TOTAL OF U.S. SERVICES SECTOR	$60 billion

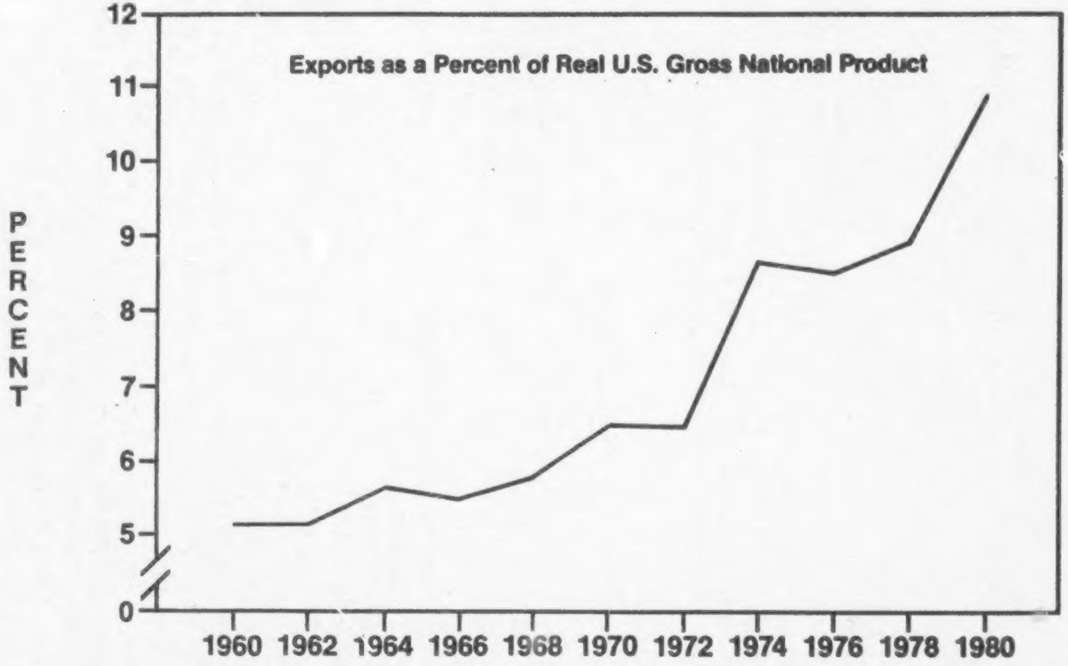
SOURCE: THE ECONOMIC CONSULTING SERVICES, INC.

U.S. BALANCE OF PAYMENTS TRADE IN GOODS & SERVICES



Source: U.S. Dept of Commerce, Bureau of Economic Analysis

THE GROWING IMPORTANCE OF THE U.S. EXPORT SECTOR



Source: U.S. Dept. of Commerce, Bureau of Economic Analysis

Chairman GIBBONS. Thank you, sir, for your very graphic and well-prepared testimony. I find your charts quite interesting and quite revealing. It shows, as I see it, that our surplus in services more than offsets our deficit in goods.

I am becoming aware of the fact that while we drafted all these statutes in terms of goods, that we just terribly neglected the service area.

What do you see as the emerging problems in the service area?

Mr. FREEMAN. There are a number of them, Mr. Chairman. Mr. Pratt referred to transborder data flow. I have been very much involved in that and that is becoming a major difficulty.

You get all kinds of very subtle nontariff trade barriers that diverge from the type that were first addressed in the Tokyo rounds. These barriers range from using exclusively local nationals as models; to domestic in television advertising; to various types of licensing laws; to discrimination against airlines. You know, national airlines can land any time, foreign airlines come in at 6 in the morning—this type of thing.

Frequently it has been a question of perception of these issues as an airline issue, or a modeling agency issue, rather than as a trade issue. We have found in the few problems we have had that thinking of them as trade issues, working with the Trade Office, has been very successful.

We know of other companies such as insurance companies who have had some major problems in gaining admission into countries, and the Trade Office has been effective in handling those kinds of problems. But they could use some legislative help to give them the weapons not to stir problems but to really solve them, nip them in the bud.

Chairman GIBBONS. Do you think we are prepared for a negotiation, a GATT negotiation on service barriers?

Mr. FREEMAN. Today, no. Over the next couple of years, yes. It is exceedingly complex. The service sector is exceedingly diverse, but it does not defy intelligence and logic.

If we had to do that today, we would be very hard pressed. But what you do in the fall of 1982 at the GATT ministerial is say, "OK, we are going to talk about services; we are going to talk about agriculture; we are going to talk about enforcement of the MTN," and so forth.

This sets in train here and around the world a series of expert studies to get ready for negotiations. So, over a period of years we would be prepared and others would be prepared to sit down and have serious discussions and negotiation. Today, no; in the future, certainly, but we have to start that process.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman.

Mr. Freeman, we appreciate your testimony. On page 9 you get into the evils of protectionism, as did your predecessor witness. But you do not give us a lot of good advice on how we can induce our friends, both in Japan and in the European Community, to be a little bit more open in their relationships with us and with one another.

Do you have any great ideas for us?

Mr. **Freeman**. I do not have any great ideas on these things. I can say from personal experience the greatest problem with dealing in Japan is linguistic and cultural rather than formal trading laws.

My own company, I must admit, has done very well in Japan. I think things are going to get tougher between the United States and the Japanese because they are going to be shifting over this next 5 to 8 years, from steel and cars to exports of computers, information software, and other things which are going to give us even a harder run for our money.

I think we have been unusually lenient with the Japanese. I think there is a major communications problem between us and the Japanese. I think communication problems are always understated.

Mr. **Frenzel**. Do you think that we ought to be a little tougher on them, that we should, for example, deny them access to certain parts of our market if they refuse to open up their markets to us?

Mr. **Freeman**. We would not favor precise or strict reciprocity. We think that various agencies of Government, both Federal and State as well, should take into account the treatment given by foreign countries to American companies when they exercise discretionary powers over admitting and regulating foreign companies.

We think legislation to that effect should be had both in the Trade Act and things like the Communications Act. Straight reciprocity tends to be very, very difficult and very strict.

But introducing the concept of parity of treatment, or taking into account how European countries, Japan, or other countries treat us by your various Government agencies, combined with close oversight by committees such as this one, I think, is the approach—and the sooner the better.

Mr. **Frenzel**. Later on in your testimony you give us three things that need to be done. On page 10 you indicate we need to carry on our discussions in an international forum. And you say then, in the meantime you should follow the rules of GATT.

Looking at your paper later on I do not find the indication that you want to abandon the GATT, but may we assume that the international forum you are talking about in No. 1 there is the GATT?

Mr. **Freeman**. Yes, maybe we did not make it clear enough, Congressman Frenzel. Let me make it clear. We are talking about GATT. GATT membership is not universal. Many—probably most—of the developing countries are not members of the GATT. Many trade issues are not yet discussed under a GATT framework.

We do not think, incidentally, that the GATT is by far the greatest organization in the world, it just happens to be the best game in town in a one-town stake. So, it is there and I think we ought to utilize it, to try to encourage more membership and try and get GATT to enforce the MTN. The upcoming ministerial talks should help on that. We should try and get GATT involved in more subjects.

We think that the GATT mechanism is the best available mechanism around today.

Mr. **Frenzel**. Now we, as you know, have great difficulty with some of our neighbors, particularly a large one to the south for whom it has become a matter of pride not to join the GATT.

We will certainly appreciate anything that the business community can do to encourage our friends abroad to cooperate with us, to join the GATT and to join those negotiations because it is difficult for us to negotiate rules in the absence of some of the major players.

Mr. **Freeman**. We are active in both our organization and other business organizations—indeed, my company is quite active in Mexico—to try and encourage them into the GATT. I agree with your statement, has become a matter of pride that they have not joined GATT.

But their economy is changing also to a more export oriented one and it is in their interest, we think, in the long run to be a GATT member. We are trying to persuade them to make that decision.

Mr. **Frenzel**. Well, I thank you again for your testimony, I think it is first rate.

I assure you with respect to your point No. 3(a), that this subcommittee has thought a great deal about the GATT Ministerial and we are anxious to get your thoughts and those of other people in international trade presented to us so that we can take a very active role in that particular meeting.

I think this subcommittee since the Trade Act of 1974 takes its responsibilities very seriously. We do not cede all of the trade policy ground to the administration. So, we will be looking forward to hearing from you on a continuing basis as we come closer to whenever that is due—I guess next November—we are hoping.

Mr. **Freeman**. You will be hearing. Thank you.

Mr. **Frenzel**. Thank you. I yield back the balance of my time.

Chairman **Gibbons**. Mr. Vander Jagt?

Mr. **Vander Jagt**. I just want to thank Mr. Freeman for his excellent testimony. I have no questions, Mr. Chairman.

Chairman **Gibbons**. Thank you, Mr. Freeman, we appreciate your coming here and helping us with this problem. We will study your entire testimony in detail.

Mr. **Freeman**. Thank you, Mr. Chairman.

[The following was subsequently received:]

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HARRY L. FREEMAN
SENIOR VICE PRESIDENT
OFFICE OF THE CHAIRMAN

RECEIVED
JAN 5 1982
Ways and Means
Subcommittee on Trade

December 30, 1981

Dear Congressman:

On December 10th I testified before the Subcommittee on Trade of the House Ways and Means Committee on behalf of the United States Council of the International Chamber of Commerce.

I would like to supplement my testimony with the enclosed statement of the International Chamber of Commerce on liberalization of trade in services.

The statement, approved by the Executive Board of the ICC, calls on governments to prepare multilateral negotiations on liberalization of trade in services and says that extension of GATT to include trade in services would be the most effective way of achieving this objective.

Thank you for including this important statement as part of my testimony.

Sincerely yours,

Harry Freeman

Honorable Sam M. Gibbons
Committee on Ways & Means
House Office Building
Washington, D.C. 20515

CC: Mary Jane Wignot

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Working document

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COMMISSION ON INTERNATIONAL TRADE POLICY AND TRADE-RELATED MATTERS

POSITION PAPER ON LIBERALISATION OF TRADE IN SERVICES

Statement adopted by the Commission. At its meeting on 30 September, the Executive Board of the ICC granted the Secretary General advance authorisation for the immediate release of this document.

1. In almost all industrial countries and in much of the developing world the service sector has significantly increased in importance over the last thirty years. By 1978 the contribution of the service sector to Gross Domestic Product was at least as important as that of the industrial sector for nearly all GATT contracting parties, and its importance as a source of employment increased accordingly. As with merchandise, a large part of this service activity does not give rise to international transactions, but in many industries international business has also greatly expanded, and now represents a considerable share in trade flows. Between 1967 and 1975 world trade in services increased by about 6 per cent per annum in real terms, and by 1975, exports of services represented over 20 per cent of total exports of goods and services for all countries.

2. Much of this service activity is not conducted purely for its own sake, but is also an essential adjunct to international trade in raw materials and manufactured goods. Though many of the impediments to a free flow of goods have been removed or significantly reduced by the rounds of multilateral negotiations under the auspices of the GATT, many service industries, including, for example, not only the more traditional areas of construction and engineering services, insurance, banking and financial services, legal and medical services and [illegible],

but also tourism, franchising, information and data services, leasing and consultancy, still confront severe government-imposed obstacles to their international operations. These restrictions not only reduce the efficiency of services trade, but also produce unfair competition among the service industries of different nations, and introduce cost distortions into trade flows of goods. At present these restrictions cannot always be identified or remedied. This is partly because as yet there does not exist an agreed international standard for the treatment of services, which makes it difficult to define the remedies appropriate to resolving problems of unfair competition.

3. A progressive and comprehensive liberalisation of international trade in services is now therefore timely and necessary to reduce the present distortions in such trade. Liberalisation of services trade, permitting greater access for service industries to exercise their activities in foreign markets would act as a stimulus to international trade, and would also often have an innovative effect in local service industries and thus contribute to economic development. The International Chamber of Commerce, with members in over one hundred countries, therefore urges governments of both developed and developing countries to respect and fully implement existing agreements providing for the liberalisation of services trade, and to begin the preparations necessary for mutually advantageous negotiations to reduce impediments to international trade in services on a multilateral and, wherever possible, reciprocal basis.

4. Circumstances in individual countries and existing arrangements in some service markets will influence the pace at which liberalisation can be pursued. At least initially, therefore, the liberalisation of services trade implies:

i) that all such trade be conducted according to the principles of fair and open international competition;

ii) that internationally traded services originating from any country be subject to equal treatment by the recipient nation (the most-favoured nation principle);

iii) that, where they are not in the wider interests of the service user, restrictions on the ability to purchase services across national borders be reduced in as far-reaching and as reciprocal a manner as possible;

iv) that the above principles, and any departures from these principles which are deemed necessary during the transition to a fully liberal services trade system be subject to periodic review and negotiation; and

v) that new limitations to the international free movement of services be avoided as far as possible, and that if a situation were to arise calling for further restrictions, such restrictions be temporary and subject to prior consultation and negotiation.

5. The ICC welcomes the efforts made in a number of circles to compile information on the trade effects of restrictions on international service transactions, and on specific problems faced by individual industries. It hopes that such efforts will continue. However, the ICC believes that, in addition, it is now necessary to develop practical methods and procedures to eliminate the major impediments to international trade in services, or, at least, to greatly reduce their effect.

6. In spite of the differences in activity among the different service industries with international interests, the ICC believes that the underlying principles of liberal trade and fair competition are common to all. Thus, although the impediments to liberal trade in individual service industries might appear different in their detailed application, it is possible to classify them as departures from these underlying principles, in terms of major non-tariff barriers to trade applying to all industries. The ICC therefore puts forward such a classification, which is not exhaustive, which might profitably be used in conjunction with the data at present being compiled in several quarters to develop a framework of obstacles to trade in services which would then serve as a basis for a negotiated liberalisation of this field. (This classification is included as an annex to this document).

Recommendations for Action

7. In the long term, any effective and comprehensive liberalisation of international trade in services must be conducted on a multilateral basis. The extension of the GATT to include trade in services represents the most effective method of achieving this liberalisation for the following reasons:

i) International trade in goods - which is already covered by the GATT - and international trade in services are governed by the same underlying economic principles, and in many cases the impediments involved - subsidy and regulatory practices, government procurement procedures, technical standards and licences - are similar. The impediments which are more specifically related to trade in services can still be regarded as non-tariff barriers, and should be tackled in a similar manner to the non-tariff barriers discussed during the Tokyo Round.

ii) The application of the most-favoured nation principle espoused in the GATT ensures that the benefits from liberalisation will accrue to all nations.

8. The ICC therefore calls upon all governments to accept that the principles espoused in the GATT system for the regulation of world trade be extended to cover trade in services, and urges them to begin preparations towards multilateral negotiations to reduce existing impediments to international trade in services and to create an accepted framework for the conduct of liberal trade in services. There have been proposals for a Special Session of the GATT Contracting Parties in 1982, at which trade in services would be one of the items for discussion, and this initiative is welcomed by the ICC. The classification of non-tariff barriers to trade in services set out in the annex demonstrates that many of the obstacles to services trade are similar in principle for many industries (eg. the existence of subsidies which distort competition, administrative impediments to operation, etc.) and it is therefore possible for the principles of a liberal framework for services trade to be negotiated on an overall multilateral basis, in a similar fashion to the negotiation of the principles espoused in the Codes on non-tariff barriers agreed during the Tokyo Round. This is but a first stage, however,

and does not imply that the application in practice of the regulatory measures required for liberalisation will be necessarily of an across-the-board character, as in certain instances the regulation resulting from negotiated agreement on the basic principles for liberalisation will have to be tailored to meet the specific operating characteristics of the different industries involved.

9. However, the acceptance that the principles espoused in the GATT should be extended to cover trade in services does not imply the exclusion of other fora from this process of liberalisation in the short-term. Important work for trade in services has already been undertaken in other circles, notably the Declaration and Decisions on International Investment and Multinational Enterprises adopted by the Governments of the OECD countries in 1976, and the contribution of agreements in such fora to the liberalisation of trade in services should not be underestimated or ignored. The ICC welcomes the initiative taken in the meeting of the Ministerial Council of the OECD of June 1981, where

> "Ministers expressed the wish that the ongoing OECD activities in the field of services be carried forward expeditiously. They agreed that, in the light of the results of these activities, efforts should be undertaken to examine ways and means for reducing or eliminating identified problems and to improve international co-operation in this area".

In addition, in the absence of overall multilateral agreements, a large measure of liberalisation could also be achieved in the shorter term through a series of industry-specific negotiations. Certain governments are already committed to a liberalisation of trade in services, and the ICC encourages them to enter and expand negotiations with other governments. In addition, certain industries are already regulated by intergovernmental or inter-industry agreement, and initial liberalisation measures might be negotiated using the existing regulatory institutions.

10. The ICC fully recognises that an overall multilateral agreement will require a lengthy period of comprehensive preparation. Therefore, it recommends two specific issues which might be tackled immediately to produce solutions in the near future as a first stage in the progressive liberalisation of services trade. These recommendations do

not imply, however, that other obstacles to services trade are not of equal importance to certain industries, and the ICC hopes that, wherever possible, advances in the liberalisation process might also be made in these other areas at the same time.

i) Government procurement

An Agreement on Government Procurement was negotiated during the Tokyo Round of Multilateral Trade Negotiations under the auspices of the GATT. The Agreement, which entered into force on 1 January 1981, contains detailed rules on the way in which tenders for government purchasing contracts should be invited and awarded. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent, and to ensure that they do not protect domestic products or suppliers, or discriminate among foreign products or suppliers.

At present the Agreement applies primarily to trade in goods, as services are only included to the extent that they are incidental to the supply of products and cost less than the products themselves. However, the Agreement specifically mentions the possibility of extending its coverage to services contracts at an early date.

The ICC therefore urges all governments to respect and apply fully the existing Agreement, and calls upon contracting parties concerned to prepare negotiations, taking into account the experience of the present Agreement, with a view to including services procurement in the Agreement, and to make the list of government entities which would be covered by the Agreement as wide as possible.

ii) Legal establishment and access to markets

The rights of legal establishment and of access to foreign markets concern firms trading in goods and services alike, but are of particular importance to many service industries, owing to the nature of their business. As a first step in liberalising services trade, therefore, it is important that governments extend national treatment for establishment and market access to all firms wishing to establish an operation within their national boundaries. This would best be achieved by means of an agreement including provisions that

1. Where the applicant firm meets the local legal requirements for the establishment of a company in the host country (reasonable allowance being made for the different legal forms under which enterprises may exist), such establishment should be freely granted.
2. The legal requirements for establishment apply equally to domestic and foreign applicants.
3. Information on such legal requirements be freely available.
4. The application procedures be implemented in a non-prejudicial manner.
5. Access to the domestic market for any firm should not be impeded by the imposition of discriminatory restrictions on the size of the firm or the level of sales.

The ICC therefore urges all governments to take up this issue and enter into negotiations to develop an international agreement based upon the principles outlined above, to permit the unimpeded establishment and participation of international service industries wishing to operate internationally.

A GLOBAL FRAMEWORK OF IMPEDIMENTS TO TRADE IN SERVICES

The following classification of barriers to services trade is based on the premise that, notwithstanding the differences in activity among the different service industries covered, the underlying principles of liberal trade and fair competition are common to all. It attempts to draw together data on obstacles to trade in services experienced in specific industries and to classify it in terms of these underlying economic principles. This classification then offers a manageable framework of non-tariff barriers to trade which can be used as a model for a negotiated liberalisation to international trade in services.

1. Rights of Establishment and Access to Markets

Establishment in third countries is, in general, more important for many service industries who wish to conduct international transactions than it is for manufacturing industries, as in many cases the provision of the service relies on the existence of a local office or outlet.

However, an additional factor in the successful establishment of a local office is the ability of a firm to gain realistic access to the market in which it wishes to operate. For transport services, for instance , the ability of a vessel to put down and pick up passengers or freight in a particular area is of greater importance when considering market access than is the establishment of a local agency. Any discussion of establishment questions, therefore, should cover equally both establishment legislation - "the bricks and mortar" - and freedom of access to markets. Restrictions on establishment and market access for service industries appear to be some of the most important deterrents to international trade in services for all industries.

Impediments in this category arise from the complete or partial denial of access to a market as a result of:

1) prohibition upon the establishment of local operations or upon the importation of a service by a foreign firm.
2) the operation of a system of licences, required by foreign firms before establishment or import of the services is permitted, which act as a quota upon the number or type of foreign firms granted access.

3) legislation which obliges foreign firms to operate under significantly different conditions to domestic firms, thus increasing the cost or decreasing the attractiveness of the service offered in a discriminatory manner.

Examples

Under section 1 above

a) legal prohibition of the establishment of firms.

b) the prohibition upon foreign investment in an existing domestic industry.

c) cabotage, i.e. the reservation of a country's domestic operations to its national flag carriers.

d) limitations on the freedom to pick up or put down passengers/freight in the country concerned, or to proceed through national territory.

e) the prohibition or limitation upon the activities of brokers of services to conduct their business on international markets.

Under section 2 above

a) procedural impediments in the granting of the licence.

b) the requirement that the foreign firm be able to offer a service materially different from those offered by domestic firms before the licence is granted.

c) licences may only cover limited activities, and those activities not included in the licence may not be practised.

d) non-recognition of professional licences to practice awarded in other countries.

Under section 3 above

a) the imposition of cargo-sharing or cargo-allocating agreements, either in national legislation or through the forced use of certain contract clauses.

b) limitations in foreign equity holdings or on the amount of capital required for initial investment.

c) discriminatory restrictions upon the level of sales of a foreign firm.

d) discriminatory restrictions upon the level of advertising of a foreign firm.

2. Government Economic Policy and Regulation

Although legislation is necessary to regulate certain aspects of commerce, and to further government macro-economic policies, such legislation often results in practice in barriers to international trade, as its application to domestic and to foreign firms is, in many cases, inconsistent. The legislative measures included in this category are diverse, but when brought together, they represent one of the most common and most effective impediments to international trade in services, in both the industrialised and the developing nations.

Impediments in this category arise where local government economic policy measures discriminate between the operations of domestic and foreign firms, thus providing significantly different operating conditions for the two competing groups.

1) national treatment is not extended to foreign firms.

2) government legislation effectively impedes the export of the service.

3) the application in practice of legislation in the host country is undertaken in an effectively discriminatory manner.

Examples

Under 1 above

a) Foreign firms often face different tax regimes to those faced by domestic firms.

   i) Corporation tax is levied at a higher level on foreign firms than on domestic ones.

   ii) The purchase tax on the service can be set off against the buyer's own corporation tax when domestic services are purchased, but this practice is not extended to the services of foreign firms.

iii) In countries which have no bilateral agreements, or which do not recognise the OECD Convention on Income and Capital, the problem of double taxation arises.

b) Credit facilities extended by governments are often unavailable to foreign suppliers, and private credit sources are often limited in their provision.

c) Exchange control regulations which hamper the repatriation of profits or the movement of remittances, and influence the location of the service transaction.

d) Discriminatory regulations between foreign and domestic firms with regard to contracts, documents required, etc.

Under 2 above

a) taxation practices applying to citizens working abroad act as a disincentive to trade and personnel movement.

b) the extraterritorial application of domestic laws brings the service industry into conflict with the laws of foreign governments when conducting international operations.

Under 3 above

a) The lack of easily obtainable information on local government regulations and policy measures.

b) Problems in gaining access to officials, courts, etc., to file disputes or resolve problems, or the existence of biased procedures once access has been obtained.

c) The use of technical regulations, standards, certification systems on safety, health and manning levels, etc. to discriminate against foreign firms.

3. Direct Government Intervention

In addition to their legislatory role in providing a stable legal framework for commerce and in furthering macro-economic policy, governments in many cases directly intervene in the functioning of the market mechanism to influence market-based decisions, and to further regional, social and industrial policies.

Impediments in this category arise where the competitive position of firms operating in a market is distorted by direct government micro-economic intervention. Such intervention may be by the government itself, by government agencies, or government-controlled corporations.

Such impediments can be split into two categories:

1) government intervention which attempts to favour or improve the competitive position of certain individual firms.
2) intervention which specifically hampers the competitive conditions of foreign firms.

Examples

Under 1 above

a) Government grant and loan facilities offered to industry to further regional and social policies which are not available to foreign firms.

b) Requirements that ancilliary activities be provided by local firms and sales organisations

c) The selling below cost of competitive services by local government-owned firms.

Under 2 above

a) Restrictions on contractual freedom and the setting of prices and charges.

b) Restrictions or delays in the importation of or access to equipment and utilities necessary for the operation of the service activity.

c) Requirement that factors of production (land and equipment) be leased rather than pursued by foreign firms.

d) Restrictions on the employment of expatriate staff required for the operation of a local office.

4. Government Procurement

A further source of government-imposed barriers to trade in services arises in the field of government procurement, in which the government participates directly in the market as a purchaser of services or in the tendering of government contracts.

Impediments in this category arise where governments discriminate between domestic and foreign firms when undertaking their own activity.

1) government procurement procedures limit government purchases or the tendering of government contracts to local firms.

2) there is an absence of explicit procedures and regulations concerning government procurement, or existing regulations concerning procurement are not applied, allowing discretion and discrimination in procurement issues.

Examples

Under 1 above

a) Specific regulations limit purchases by government departments, local governments and state-owned corporations to certain designated firms.

b) Government tenders are only offered to specific firms.

c) Contract clauses effectively control the allocation of the services (the use of FOB purchase and CIF sale clauses to regulate shipping).

Under 2 above

a) The lack of specific regulations allows an element of preference to be introduced in awarding government contracts.

b) Tenders are not openly announced, which restricts the ability of all firms to compete.

c) The results of tendering are not published to verify the final award of the contract.

Chairman GIBBONS. Let me say before we call the next witness that the committee has just been informed that the chairman has called a meeting of the committee for 4:30 in H-208 to take up a bill that we did not finish yesterday and that we want to try to report.

So, we will go to our next witness, Mr. Rudy Oswald who is the director of the Department of Economic Research of the American Federation of Labor & Congress of Industrial Organizations.

Mr. Oswald, we welcome you. We look forward to hearing from you and learning from you. You may proceed as you wish. Of course, you understand that your entire statement will be made a part of the record, but you may proceed in any manner that you wish.

STATEMENT OF RUDY OSWALD, DIRECTOR, DEPARTMENT OF ECONOMIC RESEARCH, AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS, ACCOMPANIED BY ELIZABETH JAGER, ECONOMIST, AND STEPHEN KOPLAN, LEGISLATIVE REPRESENTATIVE

Mr. OSWALD. Thank you, Mr. Chairman. Accompanying me this afternoon is Ms. Jager, an economist with AFL-CIO, and our legislative representative, Steve Koplan, in this area.

I would like to highlight a few parts of our testimony and I believe that it may indicate our major concerns in this area.

The AFL-CIO believes the United States needs a trade policy that is fair. Trade today consists of about $500 billion worth of merchandise, imports and exports combined. Trade affects jobs, technology, and the Nation's future.

The Nation is now in a serious recession. Already 9 million Americans are jobless. Plant shutdowns are not a sign of Christmas holidays but rather one of a national tragedy.

Compounding and worsening that tragedy is the adverse trade relationship. During the first 9 months of this year, the Nation's trade balance has run $26.2 billion in the red.

Instead of the current preoccupation with the Nation's budget deficit—money which we owe ourselves—there should be more concern about the trade deficit—obligations this Nation must meet to producers abroad.

It is time to recognize the signs that imports are aggravating the effects of the recession, particularly in basic industries.

The recession needs many national actions to turn it around and put the Nation on a solid expansion path. One of those actions must deal with the additional impact of imports upon industries reeling from the blows of recession. Imports—now over 30 percent of the production of all goods in the United States—must be regulated until U.S. industry can get back on its feet. Otherwise the plant closings will be permanent and the United States will emerge from the recession with even less of an industrial base.

For this reason, the AFL-CIO has called for action on trade as part of a much larger national recovery program. The recent AFL-CIO convention adopted a program calling for import restraints on harmful imports as part of a total package of necessary steps. This important policy should be part of a temporary national emergency program. We have attached it to our testimony, spelling out what that program should be.

I note that the law already recognizes that import injury or the threat of injury should receive temporary action. During a recession the effective enforcement of such laws is all the more urgent.

The AFL-CIO believes that primarily the goals promoted by the United States should be those that insure the United States becomes and remains a diversified manufacturing, agricultural, as well as a service economy.

We need high technology industries and many other industries—basic manufacturing and construction industry—to have and maintain full employment.

Trade, we believe, is a part of that goal, but the United States should trade to live, not live to trade.

Last summer the president of the AFL-CIO made a number of points spelling out what a fair U.S. trade policy would be. Let me highlight what those points would be.

They would provide a full account of what happens in the real world, a world where free trade does not exist. Other nations in the world do not apologize for pursuing their national interest. Yet, the United States is under constant assault when suggestions are made to move in the U.S. national interest.

Enforce U.S. laws and international agreements against unfair trade practices so as to allow U.S. producers and workers a chance to improve industries impacted by trade. Procedures that now inhibit appropriate responses should be simplified.

Monitor imports and exports and their impact on the U.S. economy. Such detailed monitoring is required now, but it does not exist. Without such monitoring, industries and workers now injured by imports are not able to make their case and solutions are not provided.

Achieve reciprocity. Where other nations bar U.S. products through one means or another, the opportunity to enforce U.S. laws to gain access should be encouraged to even out the burdens in the world. Equivalent access to foreign markets is the key.

We should end the incentives U.S. firms now have to invest abroad in order to take advantage of multibillion dollar tax subsidies and insurance for overseas investment. Firms that go abroad for cheaper labor should not be given subsidies to do so. These subsidies and pressures for expansion or relocation abroad should be repealed.

We should repeal counterproductive laws. For example, the United States now grants zero tariffs or preferences for imports of more than 2,700 products from 140 nations and territories. Congress just voted on foreign aid appropriations and yet, we spend over half a billion dollars of tariffs foregone through the generalized system of preferences and do not even note that it is foreign aid to these countries.

This generalized system of preference should be repealed. At a bare minimum, Congress and the administration should remove import-sensitive products from the list, guarantee that only the neediest countries receive the benefits and exclude Communist economies.

The real world is one in which free trade is a model but does not exist. It has not existed for a long time. This is a world in which most nations have protected their markets and pursued what they view as their national interest. They do not apologize for it.

Japan limits U.S. exports in virtually all manufactured products—autos, steel, computers, film, leather, tobacco, and many agricultural products—beef, citrus, et cetera. They do it either through law directly, or by practices, or through their distribution system which favors their own domestically produced goods.

In the United States it is considered protectionist even to try to enforce the law and codes on dumping. But the rest of the world has made agreements and enforced rules to make sure that their industries survive. That is not fair to the industries and jobs of the United States.

In the real world, there is a set of markets and governments are important determinants of how trade flows. Free trade as such does not exist.

Most nations of the world have domestic content requirements, either in policy, or law, or practice. They require or force companies to produce within their national borders at least a certain percentage of a product—a car, for example—within their borders in order to sell that car there. Or they may have so many ways of interfering with imports inspections, technical standards, special marketing methods, that their own products dominate their markets.

The United States needs to have a domestic content law for autos right now or this country will become an assembler of foreign-made parts.

The U.S. enforcement is lax on the laws that are currently in existence. We have failed to enforce many of the standards that were put into the recent 1979 multilateral trade negotiations.

The part of the law that is supposed to protect those who are injured—section 201—has failed to provide the relief that the parties have sought. Since the 1974 Trade Act was passed, only 9 to 45 cases have received any restraint on imports. The ITC usually recommends less than industry seeks—be it quotas or tariffs, or tariff quotas—and the President either ignores the ITC recommendation altogether or grants less than it calls for.

The procedures are complex and difficult. While we recognize that subsidies, dumping, and other unfair trade practices exist and are outlawed both nationally and internationally, we have received little effective action to take care of these situations.

We call for the renegotiation of the multifibre agreement as a necessary element and, as I have indicated earlier, equivalency of access is an important element in terms of dealing fairly.

One other element that I would like to bring to the attention of the committee again is the issue of trade adjustment assistance.

The AFL-CIO believes that the United States needs an improved trade adjustment assistance program and we need to put back into effect a program that was promised the workers in the 1962, 1975, and the 1979 trade negotiations where workers were told if they are injured as a result of those negotiations they would receive adjustment and help in adjusting to those changes in the national interest.

Those workers have been betrayed by the new budget cuts that do away with the protection that was promised them.

In terms of export policy and export promotion, we have favored such promotion for a long time because many of our workers are engaged and working for exports.

But we call your attention particularly to the impacts of nonmarket trade where barter arrangements and counter trade do not enter into the normal actions of a market economy that we emphasize so much. Instead, we often trade away our goods and in many cases even our critical military technology.

We believe it is important to monitor and engage in true trade relationships that will help the United States.

Clearly, much of the concern and interest today is turning to services. Services, though, we believe, is a very complicated, broad sector that needs to be dealt with carefully on a case-by-case basis to solve the specific situations involved in services.

Action to solve these specific cases should be taken, we believe, on a bilateral basis so that we can get our own house in order.

Long-term policy goals for multilateral negotiations should not get in the way of solutions for present service problems.

We also point out in our testimony the concerns that we have with the Caribbean policy that has recently been announced by the administration where they talk of a one-way free trade policy. There, we believe that the proposals are such that they do not promote healthy economies in the countries of the area but rather that they undermine jobs in the United States without guaranteeing an improvement in the living standards and conditions for many workers in the Caribbean area who already suffer and are exploited by the corporations in their own countries, and suffer so much.

There is no guarantee in the proposals that the workers in those countries will share in the profits and the benefits involved.

We believe that the proposals give a false view, also, of how the United States works.

Chairman GIBBONS. Excuse me, Mr. Oswald, could I interrupt? We have a vote on, we will be right back.

Mr. OSWALD. I would just finish with saying that we appreciate the opportunity to present our concerns and will be happy to answer questions when you return, Mr. Chairman.

Mr. FRENZEL. Well, the chairman tells us we are going to have to meet as a committee at 4:30. So, when we come back here we will do the questions of Mr. Oswald and then adjourn the subcommittee hearing?

Chairman GIBBONS. Let me ask Mr. Oswald, since you are here in Washington, could we come back sometime and catch you then? It is not fair to you——

Mr. OSWALD. I am perfectly willing to come back.

Chairman GIBBONS. As soon as we get back from voting we will have to go back over there, Mr. Oswald. Would it be possible for you to do that? I want to be fair to you and be fair to the committee.

We have a vote, then we have to go to the full committee meeting and take up the black lung matter. Could we reschedule you perhaps a little later on at a more opportune time? We would be glad to cooperate with you.

Mr. **Oswald**. I would be happy to do whatever the committee would find the easiest. Or, if you would like to submit questions in writing I would be happy to respond, either way.

Chairman **Gibbons**. Either way. But we are not giving you the audience you deserve, nor the time that you certainly deserve. I do not want to slight you. I did not know we would take the black lung thing up until just a moment ago, and then we have this vote.

Mr. **Oswald**. We think that the black lung is an important element.

Chairman **Gibbons**. We believe so, too. That is the reason why I want to be there.

Suppose we adjourn the meeting now. We will extend our invitation a little later on when we can do more justice to what you have said.

Mr. **Oswald**. Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Rudy Oswald, Director, Department of Economic Research, American Federation of Labor and Congress of Industrial Organizations

The AFL-CIO believes the United States needs a trade policy that is fair. Trade today consists of about $500 billion worth of merchandise imports and exports combined. Trade affects jobs, technology and the nation's future.

The nation is now in a serious recession. Already 9 million Americans are jobless. Plant shutdowns are not a sign of Christmas holidays, but rather of a national tragedy.

Compounding and worsening that tragedy is the adverse trade relationship. During the first 9 months of this year, the nation's trade balance has run $26.2 billion in the red.

IMMEDIATE ACTION NEEDED

Instead of the current preoccupation with the nation's budget deficit—money we owe ourselves—there should be more concern about the trade deficit—obligations this nation must meet to producers abroad.

It is time to recognize the signs that imports are aggravating the effects of the recession, particularly in basic industries.

The recession needs many national actions to turn it around and put the nation on a solid expansion path. One of those actions must deal with the additional impact of imports upon industries reeling from the blows of recession. Imports—now over 30 percent of the production of all goods in the U.S.—must be regulated until U.S. industry can get back on its feet. Otherwise, the plant closings will be permanent and the U.S. will emerge from the recession with even less of an industrial base.

For this reason, the AFL-CIO has called for action on trade as part of a much larger national recovery program. The recent AFL-CIO convention adopted a program calling for import restraints on harmful imports as part of a total package of necessary steps. This import policy should be part of a temporary national emergency program. (See attached statement, Appendix A.)

The law already recognizes that import injury or the threat of injury should receive temporary action. During a recession the effective enforcement of such laws is all the more urgent.

THE LONG-TERM TREND

The public explanations for trade policy have come full circle since World War II. Then, as U.S. seamen watched the shipping industry go down and their jobs exported to foreign flags, they were told that the U.S. is a manufacturing nation—not a service nation.

Exports of manufactures are job creators, the story went. But in the three decades since that war, the deficits have grown in basic industries: steel, autos, textiles, electronics, shoes, some types of machinery. Each time the newer technology industries were considered to be an answer. But they no longer are an answer as even aircraft and computers are now using imported parts.

Now the story has turned in 1981 as the international trade balance shifted from surplus in the 1960s to deficits in the 1970s and 1980s. Now the emphasis is on service industries in trade policy, because the U.S. is a service economy.

However, the AFL-CIO believes the United States must be a diversified manufacturing, agricultural and service economy. We need high technology industries and many other industries for full employment. Trade is part of that goal. The U.S. should trade to live—not live to trade.

The Council of Economic Advisers still portrays all people who are concerned about import damage as "special interests." The AFL-CIO believes this is a false view of the special interests in trade policy.

Importers, foreign investors or foreign governments are all special interests. On the other hand, the jobs and production that imports cost across the nation are a general problem that should be considered the national interest. The people who pay the costs of imports now number in the millions. Surely it is time to recognize the costs as well as the benefits involved.

The AFL-CIO believes in fair trade. Instead, the government abdicates responsibility except to try to talk other countries into greater markets for U.S. exports. That is a valid and important goal, but it is only part of the picture and part of the goal. The continued encouragement of products from nations which don't give America a fair deal is a bankrupt policy. The negotiators have no leverage under such policy.

The President of the AFL-CIO asked for a fair trade policy last summer. He made these main points:

A fair U.S. trade policy would

Provide a full account of what happens in the real world, a world where free trade does not exist. Other nations in the world do not apologize for pursuing their national interest. Yet the U.S. is under constant assault when suggestions are made to move in U.S. national interests.

Enforce U.S. laws and international agreements against unfair trade practices so as to allow U.S. producers and workers a chance to improve industries impacted by trade. Procedures that now inhibit appropriate responses should be simplified.

Monitor imports and exports and their impact on the U.S. economy. Such detailed monitoring is required now, but it does not exist. Without such monitoring, industries and workers now injured by imports are not able to make their case and solutions are not provided.

Achieve reciprocity. Where other nations bar U.S. products through one means or another, the opportunity to enforce U.S. laws to gain access should be encouraged to even out the burdens in the world. Equivalent access to foreign markets is key.

End the incentives U.S. firms now have to invest abroad in order to take advantage of multibillion dollar tax subsidies and insurance for overseas investment. Firms that go abroad for cheaper labor should not be given subsidies to do so. These subsidies and pressures for expansion or relocation abroad should be repealed.

Repeal counterproductive laws. For example, the U.S. now grants zero tariffs or preferences for imports of more than 2700 products from 140 nations and territories. These special privileges called the Generalized System of Preferences (GSP), do not aid the neediest people abroad, and the imports injure U.S. industries and jobs. This Generalized System of Preferences should be repealed. At a bare minimum, Congress and the Administration should remove import-sensitive products from the list, guarantee that only the neediest countries receive the benefits, and exclude communist economies.

Establish national security policy goals that provide not only an adequate defense but also a fully-employed, strong economy. Only a strong United States that has the means to feed, house, clothe and transport its population can provide adequate national security.

Provide realistic adjustment assistance for those injured by trade. The cost to the nation of losing its pool of skills is severe. Millions of Americans have lost their jobs through no fault of their own as a result of trade policies. Lost jobs, devastated communities and eroded tax bases dot the U.S. landscape. Yet these losses are not even measured, much less corrected.

These policies are part and parcel of the recent AFL-CIO policy statement adopted at the AFL-CIO Convention in November. (See Appendix B.)

This is still an appropriate set of guidelines.

REAL WORLD REPORTING IS OVERDUE

This is not a world of free trade with a "world market" out there for any U.S. entrepreneur to sell exports if only he tried hard enough. This is a world in which most nations have protected their markets and pursued what they view as their national interest. They do not apologize for it. Japan limits U.S. exports in virtually all manufactured products—autos, steel, computers, film, leather, tobacco, and many agricultural products—beef, citrus, etc.—either by law, practice or their distribution system.

In the U.S. it is considered "protectionist" even to try to enforce the law and codes on dumping. But the rest of the world has made agreements and enforced rules to make sure their industries survive. That is not fair to the industries and jobs of the U.S.

In the real world, there is a set of markets and governments are important determinants of how trade flows. Free trade does not exist.

Most nations of the world have domestic content requirements either in policy or law or practice. They require or force companies to produce within their national borders at least a certain percentage of a product—a car, for example—within their borders in order to sell there. Or they have so many ways of interfering with imports inspections, technical standards, special marketing methods that their own products dominate their markets.

The United States needs to have a domestic content law for autos right now or this country will become an assembler of foreign made parts.

Assistant Secretary of State, Robert Hormats, recently described the 1977 Mexican auto decree as follows: "The 1977 Mexican auto decree requires a producer to obtain the foreign exchange requirements needed for their operation (e.g., for imported components and indirect foreign exchange costs such as interest and dividend payment made abroad) through the export of completed vehicles and parts, and allocates foreign exchange among the producers on the basis of, inter alia, the percentage of domestic materials incorporated in their products."

Mexico is not in the GATT, so the GATT rules do not apply. The fact is, that action needs to be taken by the U.S. Under its own law—not to be hostile to Mexico, but to make sure that the U.S. auto and parts industry thrives. That is a governmental obligation.

But these national actions by all other nations are virtually overlooked or become the subject of efforts toward future negotiations for international agreements. The AFL-CIO believes that there must be action now or the long-run will see a United States without industrial strength.

U.S. LAW ENFORCEMENT IS LAX AND INTERNATIONAL AGREEMENTS ARE NOT ENFORCED FOR U.S. INTERESTS

Attempts to carry out international agreements or other pursuit of U.S. rights are regarded as protectionism—but little attention is paid to actions of other nations against the U.S.

Enforcement of existing laws—and improvements where they are failing—is therefore a first step toward fair trade.

The GATT and U.S. law allow temporary action when injury to U.S. industry occurs.

Now the auto workers and many other U.S. unions have petitioned for relief from auto imports—injury that is obvious. The law designed to provide time for the industry to become competitive is Section 201 of the Trade Act of 1974—and the "escape clause" of the General Agreement on Tariffs and Trade (GATT). Thus the case was not a violation of any agreement or law. But the result was no action by the U.S. government. Two Presidents told the Japanese there would be no restraints by the U.S. government. The Japanese when finally convinced that some action had to be taken, put modest restraints on their exports. But U.S. producers of auto parts have received no help at all for their special problems.

No injured industry has ever achieved the relief it sought under Section 201. Since the 1974 Trade Act was passed, only 9 of 45 cases have received any restraint on imports. The ITC usually recommends less than industry seeks—be it quotas or tariffs or tariff quotas—and the President either ignores the ITC recommendation altogether or grants less than it calls for.

Specialty steel, color TV and shoes are examples of the industries where relief has been phased out or phased down. Industrial fasteners—nuts, bolts and screws—receive minimal relief and are currently seeking an extension of that minimal relief.

These are just a few examples of major industries that are affected. Small producers of parts essential to these industries usually get no relief at all.

Under current procedures, the cost, the data requirements and the complex legalisms are so difficult to overcome that injured industries and groups of workers cannot afford to bring actions for relief from inrushes of imports or dumping. This is not fair trade policy. This policy of inaction leads to more unfair trade. The law should be enforced, improved and emergency procedures established to prevent the outrush of key industries.

Subsidies, dumping and other unfair trade practices, condemned in law—both nationally and internationally—have received relatively little effective action. Even when injury is proven and violation of laws and agreements is well known, only occasional limited actions have been taken.

For example, steel has been subsidized and dumped in the U.S. market for a long time. But neither the U.S. law on dumping nor the international agreement has been widely enforced. A "trigger price mechanism" to get the steel industry to withdraw its dumping suits was established and was helpful for a time. But the massive losses of American steel production continue. Fabricated steel is not even effectively monitoried, so that loss is uncounted. But when steelmakers talk about filing legal actions against unfair trade, the roar against "protectionism" is deafening.

A U.S. petition for dumping action on imported TV sets received a positive finding in the late 1960s. However, legal suits continued until June 1981 when the ITC ruled against the Japanese attempt to reverse earlier decisions. These U.S. actions were too little, too late, and in the meantime, the industry has been eroded.

A RENEGOTIATED MULTIFIBRE ARRANGEMENT IS NECESSARY

Textiles and apparel receive some help, but the barrage of complaints about this industry leads to a distortion of the size and importance of that help. It is unfair to expect the U.S. to continue to destroy its domestic textile and apparel industry and to charge the U.S. with protectionism in a protected world.

An international textile agreement—the Multifibre Arrangement—regulates this trade. It should be renegotiated to provide for orderly sharing of the U.S. market growth in the U.S. This is fair under international rules.

EQUIVALENCY OF ACCESS

But reciprocity—equivalency of access to markets—is a fair trade concept that the U.S. policymakers have too long overlooked. Thus a U.S. exporter does not have equivalent access to the markets of Japan, or Brazil or Romania or the Soviet Union or most countries in the world. But the cry of protectionsim is not leveled against these foreign governments. The outcry is against the U.S. producers who complain. If all the U.S. government does is ask for access and never takes action at home, the foreign negotiators will win our markets and the U.S. will continue to lose its industries.

Some of the newest U.S. industries, like semi-conductors and computers and aerospace, are good examples of U.S. industries that will soon be lost because our trade policy does not enforce reciprocity. Instead, the industries can go to other nations, be protected within those markets and export to the United States or third markets. U.S. policy, which tried to avoid any help to American producers in the U.S., supports subsidies to the investors abroad in most nations of the world. This is not fair.

TRADE ADJUSTMENT ASSISTANCE

The AFL-CIO believes that the United States needs an improved trade adjustment assistance program for workers injured by imports. Experience for the past 20 years underscores the urgency of improving benefits for those who lose their jobs from the cause. The Omnibus Budget Reconciliation Act of 1981 virtually abolished the trade adjustment program. The paltry sum now available in the budget—a cut from $1.5 billion to $317 million—amounts to another broken promise to those who pay the price of trade liberalization.

The cost is now being paid across the nation. Yet the Administration and the Congress have not provided even the paltry $112 million promised for training.

EXPORT POLICY

Export promotion should be a government priority. Exports of farm products, manufactured products and raw materials are important. AFL-CIO members work on farms and in factories and in offices and in services. They produce some of the world's most sophisticated, as well as some of the older, industrial products for exports.

However, export policy is not the answer in a world where equivalency of access does not exist. Export promotion should be targeted for specific goals and should not include capital, technology and price sensitive commodities. Export promotion should emphasize processed agricultural products.

To reduce inflation in food, it is important to restrict the export of commodities in short supply. The world trade in grain has become so complex that the AFL-CIO believes a National Grain Board, similar to the Canadian Wheat Board, should handle foreign sales of U.S. grain. While we wish to encourage the export of coal and other materials, policy should be flexible enough to assure adequate energy supplies at home.

Export promotion should neither get priority over domestic budget needs nor be used as an excuse for blanket changes in U.S. antitrust or banking laws.

Stopping the incentives in our tax and trade laws for foreign expansion by U.S. firms and banks would help the United States to achieve both better trading arrangements and a better economy at home.

The principal traders of the world are now multinational banks, firms and governments who are often their partners. Some governments are multinational entities. The governments of many countries—both communist and non-communist—have become huge multinationals. Developing countries now spawn multinationals of their own. Most multinationals are no longer U.S.-based, but the U.S.-based multinationals still dominate U.S. trade. The tax and trade laws made this possible.

The multibillion dollar tax subsidies available for U.S.-based firms' operations, such as the Domestic International Sales Corporation, foreign tax credits and the deferral of taxes on overseas profits are in direct conflict with national needs, such as the availability of capital at home. No longer can they be justified as promoters of exports. They should be repealed.

The Overseas Private Investment Corporation should also be ended, since it encourages U.S. firms to invest abroad by insuring such investment against political risk. That is a subsidy of the export of U.S. technology.

For foreign multinationals in the United States, the AFL-CIO has urged adequate reporting. The AFL-CIO has also opposed raids or unscrupulous takeovers, and has called attention to the need to prevent takeovers in strategic industries. In addition, the current influx of investments has led to many abuses and avoidance of U.S. labor laws. The AFL-CIO has consistently warned that U.S. laws and international codes on labor should be enforced.

NONMARKET TRADE

The impact on U.S. trade of barter arrangements can be large. Pricing policies of the firms using barter and/or of a communist country are not based on product cost as in a market system. Countertrade is a serious danger because of the continued transfer of technology and the loss of production and jobs. Yet countertrade may represent 20 percent of world trade in the 1980s.

Critical U.S. military technologies have been handed over to nations committed to support the Soviet Union as part of a massive pattern of transferring U.S. technology around the world.

The AFL-CIO has long urged adequate monitoring of non-market trade and bilateral regulation.

SERVICES

Services represent a huge combination of issues too long overlooked in trade policy. For U.S. banks, shipping companies, airlines, broadcasting, advertising, insurance and many other types of firms, the policy issues seem clear: discrimination against their foreign expansion calls for action by the U.S. government.

For many years, AFL-CIO policies have also called attention to effects at home. Seven out of ten U.S. jobs are now in "services." American seamen were the first to experience the export of service jobs after World War II, as we noted earlier in this statement. American air traffic has led to disputes that affect pilots, flight attendants and maintenance crews. The AFL-CIO does not want to see jobs in services—now the majority of jobs in the U.S.—traded away as manufacturing jobs have been.

In the new world of services, definitions are needed. The balance of payments accounting lists "services" or "invisibles" to include current payments for virtually everything except merchandise and long-term capital flows. Such a massive bundle of industries and problems is a tall order for the world's negotiators.

The AFL-CIO believes that policies on services should be carefully developed on a case-by-case basis to solve specific situations. Action to solve these specific cases should be undertaken on a bilateral basis. Long-term policy goals for multi-lateral negotiations should not get in the way of solutions for present services problems.

INVESTMENT POLICIES

The long term trends indicate that investment abroad has grown so much that the policies to expand it are obsolete.

Services are therefore intertwined with the massive increases of total U.S. international capital flows. These rose 800 percent between 1970 and 1980 and dwarf the 164.5 percent increase in the nation's gross national product. These capital movements are highly volatile and interfere with domestic economic stability.

Flows of U.S. direct investment abroad were $7.6 billion in 1970 and $24 billion in 1979—an increase of over 200 percent. In comparison, fixed nonresidential investment in the U.S. rose only 169 percent during this period.

While it remains at lower levels, foreign direct investment in the U.S. has increased at even a faster rate than U.S. investment abroad. Between 1970 and 1980, annual foreign direct investment in the U.S. rose more than seven-fold, from $1.4 billion to $10.9 billion.

Floating exchange rates have weakened U.S. trading relationships by causing unnecessary fluctuation in expectations, unsettling markets, adding to investment abroad and leading to more inflation at home. They have encouraged high interest policies at home that to a large degree "manage the float."

The policy of using high interest rates to curb inflation at home has a double impact on the U.S. Such rates hurt U.S. investment and also hurt chances for improvement of industries adversely impacted by imports. In 1981, the U.S. automobile industry had its lowest sales in over 20 years and tight money as well as imports were the major cause.

High interest rates attract short-run, unstable capital from abroad. The dependence on high-interest, restrictive monetary policy weakens the U.S. and hurts the ability of the traders to improve the domestic economy.

Thus the AFL-CIO priority in attacking inflation is to attack its main underlying factors—high interest rates, too much dependence on imported oil, obsolete productive capacity, poor income distribution and unemployment. The maintenance of high interest rates to attract massive capital inflows is doubly self-defeating.

The AFL-CIO has joined trade unions in Western Europe and other industrial countries in urging our governments to seek steps to promote full employment, price stability, investment and adequate growth while coping with energy needs and technological change.

The AFL-CIO believes that more realistic and effective U.S. policies should lead to a greater cooperation with other countries for more efficient and effective trading systems for mutual benefit.

Foreign policy will always affect this nation's policies on trade. But successful foreign policy requires that the U.S. maintain its prowess at home and not assume that this economy can adjust to every foreign policy change with public explanations that the U.S. must have free trade or foreign countries will be injured. We believe continued failure to act to revitalize the U.S. economy will injure other economies as much as our own.

THE CARIBBEAN POLICY

Even worse, the U.S. now talks of "one-way free trade" for the Caribbean. "One-way free trade" will not attack the basic problems of that area. The AFL-CIO has long been concerned about the need to develop healthy economies in the countries of this area. But "one-way free trade" is absurd. All that it means is subsidies for U.S. investors and an export of jobs to countries where living standards and conditions are pitiably low without any guarantee that the people in those countries will truly share in the profits and benefits involved. A few thousand job exports and higher returns for U.S. investors does not represent our system. It gives a false view of how the U.S. works. The U.S. cannot afford the imbalance that now exists.

While current U.S. policy excludes Cuba because of its communist, left-wing dictatorship, we believe the same standards should be applied to Haiti where human rights are also denied.

Government participation in trade must therefore be recognized as an ongoing reality—not something to be avoided at all costs. Under the U.S. Constitution, Congress is empowered to regulate interstate and foreign commerce, to levy taxes, etc. The President conducts foreign policy. Both have a responsibility for a trade policy that helps the nation at home as well as abroad.

Instead there has been an abdication of responsibility. The major decisions have been to avoid taking necessary actions to revitalize the U.S. economy while talking about "free trade" in a world where free trade no longer has meaning.

The United States needs a fair trade policy in keeping with the world of the 1980s. International trade decisions at home must stress the U.S. need for a diversified industrial base with the skills and services of an advanced economy. Only a policy to create full employment and rising living standards at home will enable the United States to maintain its cooperative role as a leader in the world.

APPENDIX A

AFL-CIO ANTIRECESSION PROGRAM

Like a snowball rolling downhill, the economic recession is gaining momentum. Unemployment has increased by one million in the past three months and each day thousands more are being laid off.

But the Reagan Administration response to rising unemployment is to resurrect Herbert Hoover's economic policies of 50 years ago with additional budget cuts that will further weaken demand, reduce output, and destroy more jobs.

The resulting weakened economy would be even more costly and damaging to the nation in terms of lost production, lost jobs, lost skills, and lost income to producers and workers.

The tragedy of unemployment and the steadily worsening economic situation must be reversed.

The AFL-CIO calls upon the Congress to pass the following anti-recession, job-creating programs:

A. Programs already on the books must be given sufficient funding to provide jobs rapidly and help lift the economy specifically:

Revive the emergency local public works program;

Provide new low- and middle-income housing units;

Restore public service jobs for workers not able to find jobs;

Restore nationwide extended unemployment compensation benefits to protect the long-term unemployed.

B. Stimulate the economy with new legislation, specifically:

Establish a Reconstruction Finance Corporation to revitalize the economy with loans, loan guarantees, interest rate subsidies and targeted tax benefits for retooling and growth of basic industries with special consideration for high unemployment areas;

Place temporary restrictions on harmful imports to prevent added penetration of U.S. markets by foreign producers and further weakening of the nation's industrial base.

C. Use credit control authority to offset tight money policy and excessive interest rates and to channel funds into productive uses, including housing, and to stop unproductive credit flows that aggravate the economic situation with speculative excesses and merger activities.

D. Raise revenue for these programs and restore equity by:

Limiting the individual income tax cuts for 1982 to $700 per taxpayer, roughly the amount scheduled for those with incomes of $40,000;

Cutting the 10 percent investment tax credit back to its original 7 percent level to preclude subsidizing the same firms and investments as does the huge newly enacted depreciation system;

Withdrawing oil windfall profits tax give-aways to wealthy oil royalty owners in the 1981 Reagan Tax Act.

APPENDIX B

INTERNATIONAL TRADE AND INVESTMENT

In order to achieve fair trade, international trade and investment policies must give greater emphasis to U.S. interests through its own national actions and through cooperation with other nations.

The United States must remain a major maritime, agricultural and manufacturing nation. The U.S. needs a foreign trade policy that will insure—not undercut—that goal.

The new factors in international trade require attention, while old problems also need solutions:

To assure a viable industrial base and national security, immediate import relief should be accorded some key industries faced with serious erosion, such as the auto and steel industries. Existing laws should be improved to assure speedy relief to industries when the threat of injury from imports is evident. These laws also should be amended to assure that the producers of major and essential components can receive appropriate relief from injury caused by imports.

Domestic content laws should be enacted to assure continued production of such products as autos. A U.S. production requirement is needed to preserve employment and skills and shore up the nation's sagging industrial base. Local content requirements in autos should be tied to sales volume and should be phased in beginning with the 1983 model year.

The problem of steel imports requires continued attention and negotiations to assure the success of the trigger price mechanism for basic steel, the "surge" mechanism for specialty steel and effective monitoring of fabricated steel. With imports of steel nearing 25 percent of the U.S. market stronger measures, including quotas, may be necessary. Tripartite efforts, involving industry, labor and government, can assure that technological changes and capital improvements make this industry once again a vital base of America's economic future. Plant modernization must be undertaken immediately in the current locations.

The Multifibre Arrangement for textiles and apparel should be renegotiated to provide for an orderly regulation of imports of textile apparel market growth between imports and domestic production. A global approach toward textile and apparel imports and modifications of the MFA provisions to prevent major disruption and economic hardship in the U.S. textile/apparel industry are necessary.

Also, tens of thousands of workers in the electronic, chemical, pottery, glass, rubber, toy, shoe and other American industries, are unemployed because their jobs have been shipped overseas.

The manufacturing clause of the U.S. Copyright law must be extended in order to protect widespread losses of jobs throughout the U.S. printing industry.

There should be greater use of the U.S. merchant marine fleet by the U.S. Navy for auxiliary functions. Reviving the U.S. merchant marine also requires the negotiation of bilateral shipping agreements, particularly with respect to grain and coal shipments. The U.S. government also should ratify the UN Committee on Trade and Development code for liner conferences, which would help restore more equity of shipment in U.S. bottoms for cargo generated by U.S. trade. There should be a revision in the tax incentives and budgeting regulatory practices to encourage the building of new vessels in the U.S. rather than in foreign shipyards.

The slashing of Trade Adjustment Assistance, that has resulted from the budget cuts, must be reversed. Those workers who lose their jobs because of imports should receive the 70 percent of lost pay for up to one year, and the training and relocation aid that they were promised in the Trade Acts of 1974 and 1979.

Trade issues in "services" should be approached on a case-by-case basis and in bilateral negotiations. A clear and appropriate definition of services and adequate statistics need to be developed before multilateral trade negotiations are undertaken. The U.S. government should help promote the rights of American services industries abroad where unfair barriers stand in the way of increased U.S. employment. Service industries in the U.S. should be analyzed in relation to employment effects before there are any overall negotiations. U.S. service workers and firms should have protection against unfair trade practices.

The Generalized System of Preferences should be repealed. At a bare minimum, Congress and the Administration should remove import-sensitive products from the list, guarantee that only the neediest countries receive the benefits, and exclude communist economies.

Foreign trade zones in the U.S. should be limited and strictly monitored so that they do not become a means of circumventing U.S. trade laws or undercutting U.S. industries' growth.

Items 807 and 806.30 of the tariff schedules reduce tariffs on products containing parts produced in the U.S. These provisions export American jobs and should be repealed.

The U.S. should establish an oil import agency to purchase and distribute oil imports, thus assuring the nation an adequate supply of oil at a fair price.

Grains and grain agreements should assure export of food products made from grain as well as the grain itself. The U.S. government should be the negotiator, through an established "Wheat Board" similar to the Canadian model.

Export promotion should be a government priority, carefully targeted to accomplish specific goals. It should not include capital, technology and price-sensitive commodities. Export promotion must not take priority over domestic budget needs, nor be used as an excuse for undermining U.S. anti-trust laws or banking laws. The

U.S. should limit the transfer of new technology in order to assure both its national defense and its technological advances.

Foreign grant, insurance and loan programs should be supervised in terms of U.S. interests at home as well as abroad. This means that Ex-Im Bank loans, guarantees and insurance activities should be carefully limited both in amount and in the authority to expand the action.

The Overseas Private Investment Corporation (OPIC), a government agency that insures private investment abroad, should be terminated as soon as possible. OPIC has been insuring huge multinational banks and firms abroad and, thus, encouraging the export of American jobs.

Trade with Communist countries should be regulated more effectively through improved administration of Title IV of the Trade Act and by additional legislation that recognizes the economic and political fact of life that private commercial interests cannot negotiate as effectively with closed and managed economies as can governmental negotiators.

Imports should be carefully monitored in all types of industries because of new barter trade arrangements. Emergency action to curb sudden inrushes of imports is necessary.

Fair labor standards criteria must be applied to the acceptance of imports into U.S. markets to assure fair competition. Foreign producers should be required to meet minimum labor standards or face import quotas and other trade restrictions.

To regulate the immense flows of international investment capital, the U.S. Congress should establish a reporting mechanism that would require all potential foreign investors, or those who would take over an American firm or bank to provide the government with at least 60 days advance notice. The government should be authorized to withhold authorization of such investment or take-over in the national interest. Particular scrutiny should be given to take overs or investments in energy sources, minerals, and other natural resources, farm land, and banks.

More attention needs to be focused on the effects of tight monetary policy and high interest rates on trade and investment. The deleterious effects of major short term swings need to be blunted.

Tax loopholes and incentives for multinational companies to move abroad should be ended; the tax deferral halted; the foreign tax credit repealed, and the Domestic International Sales Corporation tax gimmick should be repealed.

The multilateral trade codes adopted in 1979 require constant monitoring and the enforcement of U.S. rights. Only the negotiated provisions should be enforced, particularly in the area of government procurement, where many U.S. agencies, state and local governments were specifically exempted from the requirements of the codes. National security clauses in the code should be used to assure U.S. production and jobs in key industries. No new codes should be completed until current codes are fully monitored and evaluated and no further tariff cuts should be undertaken. The President should report accurately and fully the effects of the code—at home as well as abroad.

New proposals for trade arrangements with America's nearest neighbors, or with any other individual foreign country, should be based on a realistic assessment of the past and future impact of trade and investment not only in the host country but on specific parts of the U.S. economy and on U.S. workers. Differences as well as the similarities of the trade and investment regulations of the respective countries need to be recognized. The United States should continue to try to solve specific bilateral problems, but should not enter into so-called "free trade" areas that could cause massive distortions in import-export balances. We recognize the need to help friends achieve industrial development particularly the poorest of the developing countries. This requires that the emphasis should be on internal development, not on exports to the U.S. market at the expense of U.S. workers. The Caribbean Basin is an excellent example of an area where aid must be realistic to promote living standards and not at the expense of U.S. jobs or living standards.

The U.S. needs a "fair" trade policy that enables this country to have a diversified industrial base with skills and services of an advanced economy, plus a policy that will create full employment and raise the standards of living at home as well as in other countries of the world—all of which will help the U.S. meet the needs of a changing world in the 1980s.

Chairman **GIBBONS**. Now, let me repeat again for everyone, we will continue again tomorrow morning at 9:30 as we had planned. We also plan to meet at 12 noon on Monday unless the House is not in session. I hope that will fit into everyone's schedule.

Thank you very much. We appreciate the work you have put into this statement, the thought.

The subcommittee stands adjourned.

[Whereupon, at 4:05 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Friday, December 11, 1981.]

U.S. TRADE POLICY

FRIDAY, DECEMBER 11, 1981

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON TRADE,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman GIBBONS. Good morning, ladies and gentlemen.

As some know, the House of Representatives ran rather late last night, and it has been my experience that when that happens it is rather hard to get started in the morning. But let's begin.

Our first witness is Mr. Lee Morgan, chairman and chief executive officer of the Caterpillar Tractor Co., and he is the chairman of the Task Force on International Trade and Investment of the Business Roundtable.

Mr. Morgan, we welcome you first and ask you to come forward.

STATEMENT OF LEE L. MORGAN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CATERPILLAR TRACTOR CO., AND CHAIRMAN, BUSINESS ROUNDTABLE TASK FORCE ON INTERNATIONAL TRADE AND INVESTMENT

Mr. MORGAN. Good morning, Mr. Chairman, and thank you for your words of welcome. You have already identified who I am and the role that I am playing in my appearance before you this morning.

Let me begin by saying that the Business Roundtable certainly welcomes the subcommittee's exhaustive oversight hearings, which recognize that international economic policy issues are critical to the health of the U.S. economy as well as to U.S. foreign policy.

Mr. Chairman, the international economic policies adopted by the United States after World War II it seems to us were designed to foster expansion of trade through mutually acceptable trade rules. Those policies have been generally successful. Our commitment to the General Agreement on Tariffs and Trade has led to a reduction of trade barriers, which, in turn, has increased trade and improved U.S. and world prosperity.

Yet, our success is being challenged. Protectionist pressures are emerging from around the world. From the U.S. vantage, they are compounded by the increasing ability of other countries to produce highly competitive products and by the growing intervention in economic affairs by numerous other governments. We believe firmly that the United States must resist protectionist pressures, oppose trade and investment distorting interventions by government, and make a commitment to meet the competitive challenge of our trading partners on the basis of mutually agreed upon international rules. Our effort to achieve these objectives will be successful only if we display an extraordinary commitment to meeting several fundamental challenges, which I will review.

The first, and by far the most critical challenge is to insure a strong U.S. economy. If we can bring inflation under control and simultaneously stimulate economic growth, the international competitiveness of U.S. industry will be greatly enhanced. The Business Roundtable believes the President's economic recovery program will increase incentives to invest in capital equipment and research, raise productivity and diminish inflation. We urge Congress not to veer from the basic decisions about tax and spending policy that were made earlier this year. Our only caution is that we not, in the interest of short-term objectives, proceed so far in cutting some economy stimulating programs, like Eximbank and the Foreign Commercial Service, that we undermine our longer term economic vitality. The second challenge is to insure a strong multilateral institutional framework that can deal effectively with trade and investment matters. So far, we have done pretty well at economic cooperation with our trading partners. But we are at a crucial time. I believe I sense a growing tendency for governments to try to handle a variety of domestic economic problems through unilateral restrictions on imports, and to stimulate exports through government subsidies. To stop the erosion, the United States must recommit itself to strengthening multilateral institutions such as GATT and OECD that have played such an important role in assuring post-war cooperation and prosperity. Key to this policy must be implementation of the MTN codes and a broadening of the multilateral framework to include other nations.

A third, and related challenge, is for the United States to build durable and mutually beneficial economic ties with developing nations. Our ties should be based on a greater role for the private sector, and an effective foreign assistance program.

An important aspect of this goal is creation of an international environment in which investment can make a greater contribution to the development process. One opportunity is the negotiation of bilateral investment treaties with developing countries which hope to attract U.S. investors. We encourage a more aggressive approach by the United States in such efforts.

In addition, the Business Roundtable believes the World Bank and other multilateral development institutions can serve as a catalyst for increasing flows of direct investment to developings countries. Their participation improves the climate of confidence between foreign investors and the country in which the investment is taking place.

A fourth challenge for the United States is to continue to insure a smoothly functioning international financial system which is capable of facilitating recycling of petro-dollars and supporting the expansion of trade and investment. At present, high interest rates and unstable exchange rates complicate the financial management of multinational corporations, and depress international trade and investment. While it would be counterproductive to return to fixed exchange rates, it has become increasingly evident that we must strive to provide more stability for major currencies.

The fifth challenge relates to the need to reduce government barriers to foreign investment. The United States must play an active leadership role if this is to be accomplished. I should note that Business Roundtable members view investment issues as the highest priority of this task force.

The benefits of foreign investment are clear: for the investing country, income and jobs created by repatriated profits and additional exports; for host countries, the infusion of capital, technology and managerial know-how.

Nevertheless, this country has traditionally neither encouraged nor discouraged international investment. We must be more aggressive, in our view, in pursuing opportunities to invest outside the United States and welcome the economic strength and know-how that accompanies foreign investment here.

While considerable progress has been made in developing an international framework for trade matters, no comparable framework has emerged in the investment area. A major goal of the 1980's should be to reverse the tendency to use restrictive investment policies to accomplish short-term economic objectives. Our long-term interests will be better served by adoption of international understandings and rules which promote a more open and less interventionist investment climate.

Incentives and performance requirements are one example of investment barriers that distort trade as effectively as tariff or nontariff trade barriers. But these policies appear beyond the reach of the present GATT, so identification of an appropriate institutional forum in which to review these matters is critical.

Another important aspect of investment policy involves national treatment and reciprocity. If foreign investment is to be encouraged, it must be afforded national treatment and I am sure you know foreign investors should be treated no less favorably than domestic investors.

Our sixth challenge is the reduction of self-imposed export disincentives and the more effective management of export expansion programs.

Numerous commentators, including many witnesses before this subcommittee, have identified four types of policies as the most significant obstacles to a progressive U.S. export policy—the taxation of Americans abroad, the Foreign Corrupt Practices Act, export regulations and controls, and inadequate export financing.

I am pleased to note that improvements were made earlier this year regarding taxation of Americans abroad. And, in view of the recent Senate action, it appears that some improvements may be forthcoming in the FCPA. We hope so.

With respect to export controls, I congratulate the present Commerce Department on its success in reducing the backlog of export applications. Yet, on some of the tough cases delays in export licensing remain a serious impediment to U.S. firms' marketing strategies and export opportunities.

I consider myself something of an expert on this problem. Earlier this year it took my company a full 6 months to get a license to sell pipe-laying equipment to the Soviet Union. In followup discussions for additional sales, it was clear that our earlier approved license provided no precedent for future cases. Nearly 3 months were required the second time around. Frankly, Mr. Chairman, this makes no sense to us.

The need for Government control of exports, for national security reasons is not disputed. But where controls simply impede the ability of U.S. firms to export—while not demonstrably protecting national security or advancing any foreign policy goals—they should be removed.

In spite of the Export Administration Act, export controls are sometimes imposed (or delays accomplish the same result) notwithstanding foreign availability of comparable equipment. This seriously undermines the ability of U.S. concerns to participate in some major foreign projects and adversely affects our international reputation as a reliable supplier.

We had hoped that the present administration would establish a broad policy relating to export controls, then make individual case decisions within the parameters of that policy. The administration promised the publication of its East-West trade policy months ago. Yet we have not seen it. I urge that this review be concluded and a clear policy articulated.

Turning for a moment to export financing, I believe it is clear that the United States is slipping further behind its foreign competitors in financing export sales. Eximbank rates on long-term loans are 2 to 3 percentage points higher than the normal rates charged by other countries on government-supported financing. Medium- and short-term loans are just not available. Eximbank's resources are just not adequate to meet the export financing packages offered by our major trading partners.

Mr. Chairman, I would like to focus on the need for a strong, comprehensive international agreement to harmonize official export financing. While commercial rates have risen substantially in the last few years, the minimum rate levels of the 1978 arrangement on officially supported export credits have not kept pace. The recently announced agreement which increases interest rate levels by 2¼ to 2½ percent still bears no reasonable relationship to commercial rates. A strong export financing agreement would include the following:

Assurances that official export credit agencies will operate without government subsidy and at commercial interest rates, terms and conditions. Second, a prohibition against mixed credits. Third, inclusion of the advanced LDC's. And, fourth, assurances that the arrangement is binding and enforceable.

The Business Roundtable vigorously supports development of a satisfactory successor to the 1978 agreement which includes more than minimum increases in the rate level.

Alternative forms of export financing must also be pursued. I know the business community has put its resources to work to try to develop such mechanisms, and I am confident that our creativity will help us find some solutions.

But in the meantime, while we work toward a more meaningful international agreement, and alternative financing mechanisms, I urge the Congress not to undermine our potential for success by leaving insufficient resources for Eximbank to do its job.

Our seventh challenge is to be cognizant of new problems and opportunities related to trade and investment, as they arise. Nothing better exemplifies this need for flexibility and creativity in priority setting than the emerging debate about trade in services.

Services trade is growing, as I know you heard yesterday, and the United States is in the most advantageous position to benefit from the growth, since our service industries are the world's most highly developed.

But our advantage is leading foreign countries to increase their barriers to international trade in services. The potential problem posed by increasing barriers to service trade sector, and the magnitude of U.S. interest involved, are clear.

A coherent, comprehensive U.S. policy on services trade should:

One, give service sector issues high priority in future trade and investment negotiations;

Two, expand the coverage of U.S. trade and investment laws to better deal with trade in service problems;

Three, clarify the scope of existing U.S. trade and investment laws provisions, as they apply to services;

Four, improve coordination of Federal and State policies; and

Five, insure that, in regulating the activities of foreign service industries in the U.S. market, the principles of national treatment and reciprocity are needed.

I am pleased that the importance of reducing barriers to trade in services has been recognized by the present administration and by the OECD. The Business Roundtable encourages much closer policymaker scrutiny of these problems and appropriate action.

Mr. Chairman, I have covered a lot of ground, and I appreciate your indulgence and interest. Because I have substantially summarized my prepared remarks, I would appreciate inclusion of my whole statement in the hearing record.

Chairman GIBBONS. It will be, sir.

Mr. MORGAN. Let me summarize by concluding that for the United States to retain a role of leadership in the world economy will require policies that insure a strong U.S. economy, a stable international monetary system, a viable multilateral institutional framework which recognizes and encourages the participation of the developing countries, and durable, mutually beneficial economic ties with the developing world. We need a free and open system of trade and investment, unencumbered by U.S. export disincentives and recognizing the vital importance of emerging problems. These are difficult objectives, but in my view our national prosperity and security depends on our ability to deal with them successfully.

I, and the Business Roundtable, and our staffs, look forward to working with you to meet our mutual objectives.

Thank you very much, sir.

[The prepared statement follows:]

STATEMENT OF LEE L. MORGAN, CHAIRMAN, BUSINESS ROUNDTABLE TASK FORCE ON INTERNATIONAL TRADE AND INVESTMENT

I am Lee Morgan, Chairman and Chief Executive Officer of Caterpillar Tractor Co. I am pleased to be here today in my capacity as Chairman of the Business Roundtable Task Force on International Trade and Investment. The Business

Roundtable consists of almost 200 companies, nearly all of which have substantial international operations.

My own personal interest in trade and investment issues is heightened by the fact that Caterpillar is one of the United States' largest exporters. We also have investments in 14 countries, around the world. This combination of exports and overseas production has resulted in 56 percent of our sales so far this year being outside the United States.

The Business Roundtable welcomes the Subcommittee's exhaustive oversight hearings, which recognize that international economic policy issues are critical to the health of the U.S. economy as well as to U.S. foreign policy. My remarks today will be of an overview nature. But I and other members of the Roundtable Task Force stand ready to hold thorough discussions with the Subcommittee on any of the issues contained in our statement, or others in the trade and investment area that you might identify. We are committed to cooperating with you to develop workable solutions to the thorny problems you are confronting.

Mr. Chairman, the international economic policies adopted by the United States after World War II were designed to foster expansion of trade through mutually acceptable trade rules. Those policies have been generally successful. Our commitment to the General Agreement on Tariffs and Trade (GATT) has led to a reduction of trade barriers, which in turn has increased trade and improved U.S. and world prosperity. World trade has expanded fivefold in the last decade. In the United States exports now account for more than 12 percent of GNP.

Yet, our success is being challenged. Protectionist pressures—directed toward both trade and investment—are reemerging around the world. From the United States' vantage point, these pressures are compounded not only by the increasing ability of other countries to produce highly competitive products, but also by the growing intervention in economic affairs by numerous other governments.

We believe firmly that the fundamental premise of U.S. international economic policy must be supportive of an open and competitive economic atmosphere. This will require strong resistance to protectionist pressures, opposition to trade and investment distorting interventions by governments, and a commitment to meet the competitive challenge of our trading partners. But the United States must not disarm unilaterally. If we are to have open markets in this country, allowing a substantial growth in imports, we must demand the same of our trading partners. Expansion of trade and investment on the basis of mutually agreed upon international rules is in everyone's best economic interest.

Our effort to achieve these objectives will be successful only if we display an extraordinary commitment to meeting several fundamental challenges, which I will review in my statement. Some of the challenges require multilateral action; others simply call for the United States to stop tying its own hands in its trade activities.

The first, most obvious and by far the most critical challenge is to ensure a strong U.S. economy. The United States has slipped into recession at the same time inflation persists. The rate of growth of U.S. productivity has declined to the point where the United States ranks sixth among the free world's seven major industrial nations.

If we can bring inflation under control and simultaneously stimulate economic growth, the international competitiveness of U.S. industry will be greatly enhanced. The Business Roundtable believes the President's Economic Recovery Program will increase incentives to invest in capital equipment and research, raise productivity and diminish inflation. We urge Congress not to veer from the basic decisions about tax and spending policy that were made earlier this year. Our only caution is that we not, in the interest of shorter-term objectives, proceed so far in cutting some programs (like Eximbank, or the Foreign Commercial Service) that we undermine our longer-term economic vitality.

The second challenge is to ensure a strong multilateral institutional framework that can deal effectively with trade and investment matters.

The interdependence of world economies makes economic cooperation with our trading partners imperative. We've done pretty well so far. The United States and its trading partners have negotiated international agreements to reduce trade barriers and to establish economic ground rules to limit such trade-distorting practices as government subsidies and unfair pricing, on the theory that trade must be a two-way street. The Codes of Conduct, negotiated at the Tokyo Round of Multilateral Trade Negotiations, were a major step forward in protecting firms and workers against unfair trade practices.

But we are at a watershed. There is growing tendency for governments to try to handle a variety of domestic economic problems through unilateral restrictions on imports, and to stimulate exports through government subsidies. Questions are being raised as to whether our trading partners are making a good faith effort to implement the MTN codes. These problems are exacerbated by the recognition that GATT's membership and adherence to the MTN codes may not be broad enough.

We must stop the erosion of the multilateral trading system before tensions between ourselves and our trading partners lead to a break in unity. To do so, the United States must recommit itself to strengthening multilateral institutions such as GATT and OECD that have played such an important role in assuring post-War cooperation and prosperity. Key to this policy must be implementation of the MTN codes. In addition, if multilateral trade and investment rules are to be improved, extended and adhered to, we must broaden the multilateral framework to include other nations (like Mexico and the East European nations) that are emerging as important factors in the world economy.

Accordingly, the Business Roundtable welcomes the proposed GATT Ministerial Meeting in 1982. The meeting offers the opportunity to review implementation of the MTN codes and to evaluate the adequacy of the GATT structure and operation to deal with current and prospective international trade and investment problems. These are fundamental issues and their resolution will significantly impact the future course of multilateral economic cooperation.

The Business Roundtable strongly urges Congress and the Executive Branch to look carefully at the GATT and other multilateral economic frameworks to determine how best to manage international trade and investment problems on a multilateral basis in the decades ahead.

A third, and related challenge, is for the United States to build durable and mutually beneficial economic ties with developing nations. Taken together, they are a larger market for U.S. exports than Europe and Japan combined. Our ties should be based on a greater role for the private sector, and an effective bilateral and multilateral foreign assistance program.

An important aspect of this goal is creation of an international environment in which investment can make a greater contribution to the development process. One opportunity is the negotiation of bilateral investment treaties with developing countries which hope to attract U.S. investors. Such treaties, which are actively being sought by the Europeans and Japanese, would provide for nondiscriminatory treatment and establishment of dispute settlement procedures. We encourage a more aggressive approach by the United States in such efforts.

In addition, the Business Roundtable believes the World Bank and other multilateral development institutions can serve as a catalyst for increasing flows of direct investment to developing countries. Their participation improves the climate of confidence between foreign investors and the country in which the investment is taking place. Programs such as cofinancing with the private sector and investment insurance are important examples of the role these institutions can play.

A fourth challenge for the United States is to continue to ensure a smoothly functioning international financial system which is capable of facilitating recycling of petro-dollars and supporting the expansion of trade and investment. At present, high interest rates and unstable exchange rates are complicating the financial management of multinational corporations, and depressing international trade and investment. While it would be counterproductive to return to fixed exchange rates, it has become increasingly evident that we must strive to provide more stability for major currencies.

The fifth challenge, which I'd like to address at some length, relates to the need for government barriers to foreign investment to be reduced. The United States must play an active leadership role if this is to be accomplished. I should note that Business Roundtable members view investment issues as the highest priority of this Task Force. Over the next several months we will undertake a thorough review of the problems and possible solutions, with the objective of presenting you and other policymakers constructive recommendations.

The benefits of foreign investment are clear: for the investing country, income and jobs created by repatriated profits and additional exports; for host countries, the infusion of capital, technology and managerial know-how.

For the United States, it is estimated that one-third to one-half of total U.S. exports go to foreign affiliates of U.S. companies. In 1980, this amounted to between $74 billion and $110 billion. The positive impact on domestic employment is substantial. In 1980, repatriated profits amounted to $37 billion, yielding a net balance of payments benefit of $28.2 billion. These repatriated profits are a major source of funds for increased investment.

In spite of these clear benefits, our country has traditionally neither encouraged nor discouraged U.S. international investment. We must be more aggressive in pursuing opportunities to invest outside the United States and, with limited exceptions related to our national security, we should welcome the economic strength and know-how that accompanies foreign investment in this country.

While considerable progress has been made in developing an international framework for trade matters, no comparable framework has emerged in the investment area. As a result, there is a tendency by both developed and developing nations to use restrictive investment policies to accomplish short-term economic objectives. I believe this comes at the expense of broader long-term interests. A major goal of the 1980s, therefore, must be to reverse this trend through international understandings and rules which promote a more open and less interventionist investment climate.

Because of the high priority the Roundtable attaches to investment policy, I'd like to detail some of the specific problems we see. Incentives and performance requirements are one example:

Some countries offer significant tax, credit and other incentives to attract foreign investors.

A number of LDCs have instituted performance requirements to support their national economic goals. These include minimum employment and export levels, local value added and content requirements, technology specifications, buy-back and marketing arrangements.

Even industrial nations have imposed restrictive requirements on U.S. and other foreign firms. Canada's Foreign Investment Review Act is a good example.

Imposition of these incentives and performance requirements distort trade as effectively as tariff or non-tariff trade barriers. However, since performance requirements are tied to investment agreements, these policies appear beyond the reach of the present GATT. Identification of an appropriate institutional forum in which to review, and look for an orderly way to dismantle such barriers is critical, and we applaud the current U.S. efforts to develop a strategy to push them into the limelight of the OECD and to encourage GATT involvement.

Another important aspect of investment policy involves national treatment and reciprocity. If foreign investment is to be encouraged, it must be afforded national treatment—that is, foreign investors should be treated no less (and no more) favorably than domestic investors.

Important steps toward achieving national treatment took place in 1976 and 1979 when the United States joined other OECD member governments in adopting a declaration and related undertakings on national treatment. But the commitment is beginning to appear superficial, and is unfortunately easy to circumvent.

The free flow of investment can also be adversely affected by laws and regulations which impose significant restrictions or requirements on the operation of multinational corporations. Presently of great concern to the Business Roundtable are certain proposed directives by the European Community which would require EC subsidiaries of foreign companies:

To publish (with certain exceptions) annual financial statements consolidating the accounts for all group interests located in, or controlled from EC countries;

To disclose confidential company data on global investment, production and marketing plans to employee representatives, and to inform and consult with employees on a wide range of corporate operations; and

To enforce liability on parent companies and their board members individually for decisions detrimental to the interest of EC subsidiaries.

These kinds of restrictions are severe impediments to investment, and they deserve highest level U.S. attention.

Our sixth challenge is the reduction of self-imposed export discentives and the more effective management of export expansion programs.

Numerous commentators have identified four types of policies as the most significant obstacles to a progressive U.S. export policy, the taxation of Americans abroad, the Foreign Corrupt Practices Act, export regulations and controls, and inadequate export financing.

The issue of taxation of Americans abroad was addressed in the tax package enacted earlier this year. The measure enacted represents an important step in the right direction.

And we hope that some help may be forthcoming in the FCPA and Export Trading Companies legislation. The Foreign Corrupt Practices Act is a significant export disincentive. Costly accounting procedures and considerable ambiguity in the Act's provisions have resulted in excess caution which inhibits otherwise legitimate business transactions. The Export Trading Company Act would pave the way for nonexporting companies to involve themselves more heavily in international markets. We urge Congress to complete action on these important matters in a timely fashion.

With respect to export controls, I congratulate the present Commerce Department on its success in reducing the backlog of over two thousand export applications to a few dozen. Yet, on some of the tough cases delays in export licensing decisions remain a serious impediment to U.S. firms' marketing strategies and export opportunities.

I consider myself something of an expert on this problem. Earlier this year it took my company a full six months to get a license to sell pipelaying equipment to the Soviet Union. This type of equipment offers no new technology, and is clearly available from alternative foreign sources. It is of no military value. Follow-up discussions with the Administration for additional sales of precisely the same kind of equipment for the same type of project, while taking three months to formulate, were successfully culminated just yesterday in the approval of our license. In our view, this is too cumbersome and uncertain a process.

The need for government control of exports, for national security reasons, is not disputed. But where controls simply impede the ability of U.S. firms to export—while not demonstrably protecting national security or advancing foreign policy goals—they should be removed.

The Export Administration Act requires that foreign availability determinations be made as part of the export control process. This requirement reflects Congressional recognition that it makes little sense to impose export restraints on U.S. products that are readily available from other sources. Such restraints simply transfer exports and jobs to competitors in other countries, and undermine the international reputation of the United States as a reliable supplier.

Unfortunately, export controls are imposed notwithstanding foreign availability, thus breaching the intent of the Export Administration Act and undermining the ability of U.S. concerns to participate in major foreign projects. Lengthy delays accomplish the same result. This is an area that needs closer scrutiny: U.S. exporters need certainty if they are to be dependable participants in the world trade scene.

Past Administrations have been criticized for failing to be pragmatic in licensing decisions. We urge the present Administration to establish some broad policies relating to export controls in the East-West context, then make individual case decisions within the parameters of those policies. We were led to expect the publication of its East-West trade policy months ago. High-level COCOM meetings on multilateral export controls are to be held in January. Yet we have seen no policy. I urge this Subcommittee to exercise its influence to see that this situation is not allowed to continue.

Turning for a moment to export financing, we're aware that the terms of financing are often a decisive factor in determining who will sell a product to a prospective buyer. Yet, the United States is slipping further behind its foreign competitors in officially supported financing for export sales. Further reductions in the Eximbank budget will only exacerbate the problem.

Eximbank rates on long-term loans are two to three percentage points higher than the normal rates charged by other countries on government-supported financing. Medium and short-term loans are hard to even find! The export credit insurance program is inadequate. Eximbank's limited resources are insufficient to meet the export financing packages offered by our major trading competitors.

Mr. Chairman, I would like to focus on the continuing need for a strong, comprehensive international agreement to harmonize official export financing.

While commercial rates have risen substantially in the last few years, the minimum rate levels required by the 1978 Arrangement on officially supported export credits have not kept pace. The recently announced agreement which increases interest rate levels by 2¼ to 2½ percent still bears no reasonable relationship to commercial rates. In pursuing a new Arrangement we should seek:

Assurances that official export credit agencies will operate without government subsidy and at commercial interest rates, terms and conditions.

A prohibition against mixed credits.

Inclusion of the advanced LDCs. And,

Assurances that the Arrangement is binding and enforceable.

American companies can compete, and want to compete, on the basis of price, quality, and service, and not on the basis of whose government makes the biggest handout.

Alternative forms of export financing must also be pursued. I know the business community has put its resources to work to try to develop such mechanisms, and I am confident that our creativity will help us find some solutions. But the process can only continue to be effective if there's a strong commitment to reducing subsidized financing pressures.

The Business Roundtable vigorously supports development of a satisfactory successor to the 1978 Agreement which includes more than minimum increases in the rate level. In addition, the Business Roundtable suggests that further efforts should be made to develop new forms of export financing.

It is likely that this process will take some time, and that some of these objectives may be unachievable. In the interim there is a serious risk that this country's export position could be undermined unless the Eximbank has sufficient resources to meet competitive export credit terms. We must keep our Bank strong.

Our seventh challenge is to be cognizant of new problems and opportunities related to trade and investment, as they arise. Nothing better exemplifies this need for flexibility and creativity in priority setting than the emerging debate about trade in services.

Services now represent 20 percent of world trade, including such diverse sectors as finance, insurance, construction, transportation, telecommunications and data processing. Trade in services is growing, and the United States is in the most advantageous position to benefit from the growth, since our service industries are the world's most highly developed and competitive. This competitive advantage can lead not only to increased service exports, but to related increases in merchandise exports as well.

But this advantage is leading foreign countries to increase their barriers to international trade in services. For example:

U.S. insurance companies face restrictions on doing business in Korea, and most wait several years for an operating license in Japan;

U.S. banks can't operate in Australia; Japan restricts their operations;

U.S. air carriers face exorbitant landing fees in England, discriminatory restrictions on airport use in Italy, and denial of access to airline reservation systems in France and Germany; and

Various foreign governments require that certain data processing take place within their national borders.

The potential problem posed by increasing barriers to service sector trade, and the magnitude of U.S. interest involved, are clear. A coherent, comprehensive U.S. policy on services trade should:

1. Give service sector issues high priority in future trade and investment negotiations;
2. Expand the coverage of U.S. trade and investment laws to better deal with trade in service problems;
3. Clarify the scope of existing U.S. trade and investment laws provisions, as they apply to services;
4. Improve coordination of federal and state policies; and
5. Ensure that, in regulating the activities of foreign service industries in the U.S market, the principles of national treatment and reciprocity are heeded.

I'm pleased that the importance of reducing barriers to trade in services has been recognized by the present Administration, which in April issued a five-point services trade program calling for the development of a framework for multilateral and bilateral negotiations. The Administration has also set forth its overall objectives in working to liberalize and improve international cooperation in service trade. Multilaterally, the OECD has work under way to identify and analyze existing barriers or obstacles to trade in services, and the agenda for the 1982 GATT Ministerial Meeting may include trade in services.

The Business Roundtable applauds these actions by our government, and urges a strong U.S. effort to highlight these discussions in GATT and OECD.

Mr. Chairman, I've covered a lot of ground, and I appreciate your indulgence and interest. To summarize, for the United States to retain a role of leadership in the world economy will require policies that ensure a strong U.S. economy, a stable international monetary system, a viable multilateral institutional framework which recognizes and encourages the participation of the developing countries, and durable, mutually beneficial economic ties with the developing world. We need a free and open system of trade and investment, unencumbered by U.S. export disincentives and recognizing the vital importance of emerging problems like those facing the service sector. These are difficult objectives, but in my view our national prosperity and security depends on our ability to deal with them successfully.

I, and the Business Roundtable, and our staffs, look forward to working with you to meet our mutual objectives.

Chairman **GIBBONS**. Mr. Chairman, you and the Business Roundtable have made a very fine and constructive statement, and I look forward to working with you on the problems that you have outlined.

Let me ask you, what do you think of requirements for local content laws?

Mr. MORGAN. As it relates to what?

Chairman GIBBONS. Just any product. Should America go to local content laws?

Mr. MORGAN. Our experience with local content laws as applied by other countries, Mr. Gibbons, suggests that they inevitably bring a distortion to trade matters. I think the underlying reason for them is to enforce a higher cost of producing the product into the finished product itself, otherwise there would be no particular need for them.

I suppose that I can understand their need if it were to solve a temporary situation, but based upon our belief in the free trade process and in the market economy in determining the prices of commodities that go into the finished product, I think at best they are a distortion and certainly should be discouraged.

Chairman GIBBONS. Thank you. I agree with you.

On East-West trade policy, what kind of East-West trade policy do you think we ought to have?

Mr. MORGAN. I suppose that we obviously need to start with the security considerations to determine what technology we have in this country, make a determination as to whether or not that is vital to the security interests of the United States.

I think we do need to try to bargain for bringing the planned market economies into inclusion with the private sector and make sure that the same trade rules apply to them as apply to the rest of the world, the developed as well as the developing countries. Hopefully, in the wisdom of our national policy determine what we will and won't do business in, what kind of commodities, what kind of technologies and then administer it according to that.

I do believe it is important for it to take into consideration the foreign availability issue and not delude ourselves by perhaps believing that everything in this country is unique and that selling anything helps a potential enemy.

Chairman GIBBONS. On foreign investment policy, what type of policy should we have on a worldwide basis? What should be our goal in negotiating foreign investment policy?

Mr. MORGAN. I believe the OECD has done some very thoughtful work in this area. As you know, OECD does have a code that bears on a large part of this. I think the underlying principle that is most important to incorporate and to honor is the principle of national treatment. It seems to me that if you achieve national treatment you have, almost, per se, eliminated, it seems to me, some of these performance requirements such as national content as you spoke of earlier, Mr. Chairman.

The right to national treatment, I think says a great deal in this regard and ought to be the centerpiece of it.

In terms of our own governmental policy and aside from assisting on that, I honestly believe that instead of being benign on this issue, neither encouraging or discouraging, we ought to insist upon conditions which permit it, both in this country and outside this country by U.S. companies, insist that the principles are met and then actively encourage it both ways, both by U.S. companies as well as encourage foreign investment in this country.

Chairman GIBBONS. Mr. Schulze?

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. Morgan, I, too, would like to thank you for a very comprehensive presentation.

The mental attitude of the business community in our country concerns me and I guess it is not as much your circle of friends in the Roundtable but perhaps beyond that. Do you see a growing awareness of foreign competition? I am sure that the companies involved in the Roundtable are much more sophisticated and very much involved with this. The reason I asked you this is I don't see this growing awareness as much as I would like to see it. I think the business community is still somewhat sedated to the threat of foreign competition. So I am wondering if my perspective is correct, whether you see a different view of this and whether there is something we can do about it.

Mr. MORGAN. Well, that is a very interesting comment. I guess the principal viewpoint that I have to bring is my own company's viewpoint on that. And for about the last 5 or 6 years now our principal competitor at Caterpillar is a Japanese company. And I am sure that if you were to express our concern on the streets of any of the cities within the United States where we have plants, I think you would find a great deal of awareness toward the foreign competition.

I tend to believe also that the automobile capture, if you will, by Japanese manufacturers has also enhanced the awareness of most of our citizens toward Japanese competition. As a matter of fact, I think probably within just the last year or two that, emphasized by the layoffs within the auto industry, has made a terrific impact on most of our citizens. So I would hope, Mr. Schulze, that in this situation, there is much more awareness just within the last year or two than your comment might have suggested. At least I hope that is so.

Mr. SCHULZE. Let me say in all candor that I thought the automobile situation would create that interest and attention to this problem but I don't find that among smaller and medium-sized companies. And it is a source of great concern to me. What I am getting at is that your opinion, most of the people with whom you deal are very much concerned and aware of foreign competition.

Mr. MORGAN. With respect to small and medium-size companies, again I have to speak from my own experiences, because they realize that we, as a major exporter, are their principal export sales department, if I may use that term. Roughly 50 cents of every sales dollar is spent for materials and services purchased from other companies because in a great many instances those are small and medium-size companies; they are not only aware of the export opportunity which we bring to them but because we try to keep them informed of our competitive situation they realize that they are facing foreign competition in their business with us.

And I would certainly agree with the notion that a greater emphasis does need to be made in this country.

Mr. SCHULZE. That is good news, and I am glad that you are doing that. And I urge the Roundtable to disseminate that kind of information. I have been telling businessmen with whom I come in contact that they ought to look at the export market, not with the idea that they are going to get a lot of business, but that exporting will make them very much aware of competition that is out there somewhere shooting and has its eye on their share of the market someday.

Mr. Morgan, in talking about the service sector and the potential problems, you talked about reciprocity being needed. Should we develop some kind of a reciprocal hammer that when we are blatantly discriminated against we retaliate in kind, or should we, as we have in the past, just sort of roll over and play dead?

Mr. MORGAN. I think that is a terribly critical determination. Our instincts which admittedly come from sort of a free trade philosophy are that there are lots of instrumentalities within the world which have been very carefully negotiated and very carefully considered and our view is that we ought to place a great deal of reliance upon MTN codes related to GATT, OECD, and so forth.

We also have a body of law and regulation in this country that prescribes certain entitlements, if you will, to procedures for handling hardship and unfair situations. My view would be to rely very heavily upon those and to not apply this sort of tit for tat type of reaction.

Let me refer to some accumulated personal experiences. I have spent what I think is quite a bit of time in front of and around the Japanese. As a matter of fact, just a few weeks ago I chaired a meeting involving about 12 chairmen of major Japanese companies, and an equal number of chairmen of U.S. companies. This was under the aegis of the Business Roundtable from our side and Keidanren from their side. After a while those things have a sort of element of sameness about them. And I concluded, after a lot of relationships of that kind, that we have a terrific problem of perception, one to the other.

I just know that the average American, for example, perceives, and I emphasize the word, that the Japanese markets are more closed than the Japanese perceive that they have made an effort to close them. And I suspect that the real answer is somewhere in between.

Their markets, in total, and I realize that there are some very notable examples of almost total closure, citrus, beef, tobacco, even automobiles. And yet the Japanese do not perceive that their markets are nearly as closed, in total, as we think they are. And I suspect that the real facts are someplace out in the middle.

And so the tit for tat retaliation approach, it seems to me has to deal with perceptions more than it does with actualities, and I believe it leads to actions which are intemperate And my primary reliance, therefore, that brings me to a primary reliance back on our established systems of rules and regulations.

Mr. SCHULZE. Thank you very much, Mr. Morgan.

Chairman GIBBONS. Thank you, Mr. Morgan. I have a couple more questions for you.

What do you think of the international codes of conduct that are being developed in the European Community on treatment of investment and corporate activity there? Can you comment on those? Are you familiar with those?

Mr. MORGAN. Not with all of them. I am familiar with the so-called Vredeling directive and very much worried about it as it relates to transborder data flows, and if that direction achieves force within the European Community, the restrictions that would apply to decisions to start new facilities, to modify the workload, the employment, the mission, if you will, of those objectives.

I really don't consider myself an expert on it, but I do sense that this is another example of the possible violation of the principle of national treatment which, again, we think is the centerpiece of what ought to be agreements around the world.

Chairman GIBBONS. You mentioned the perception of Japanese treatment and you mentioned that the Japanese are perhaps your biggest international competitor?

Mr. MORGAN. They are, sir.

Chairman GIBBONS. What is the Japanese treatment of Caterpillar on any products you attempt to enter into their country?

Mr. MORGAN. We are one of those examples of an industry that does not have major problems, and I have to say that there are not either tariff or nontariff barriers that we think are exorbitant in our particular case. Certainly nowhere near what automobiles and tobacco, citrus, beer, and so forth.

Chairman GIBBONS. Is that type of Japanese treatment relatively new or is that longstanding in your industry?

Mr. MORGAN. It is quite longstanding, though I hasten to add we have a joint venture company within the country, and the basic reason why we established that was to try to overcome initial problems in this regard.

Chairman GIBBONS. On Caribbean Basin policy, have you had any opportunity to take a look at the emerging policy that is being developed in this country?

Mr. MORGAN. No, we really have not. The work of our task force has not involved that particular question, but the fact that you have asked the question would stimulate us to look into it.

Chairman GIBBONS. We know that the administration is working on a policy. We have urged them to work on a policy. But any policy that is going to be very meaningful is going to have some impact upon American manufacturing, and we would hope that you all would have an input into the development of it.

Mr. MORGAN. Normally, that part of the world, as you would know, is not particularly conducive to heavy engineering type of manufacturing.

Chairman GIBBONS. That is right. It is a very difficult part of the world.

Mr. MORGAN. Right. It is an important export market from other sources.

Chairman GIBBONS. Well, I want to thank you again for the time you spent and the quality of the time devoted to this.

Thank you very much.

Mr. MORGAN. Thank you very much, Mr. Gibbons. It was a real pleasure to see you again.

Chairman GIBBONS. Dr. Michael A. Samuels, vice president, Chamber of Commerce of the United States.

Dr. Samuels, we welcome you.

STATEMENT OF MICHAEL A. SAMUELS, VICE PRESIDENT, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. SAMUELS. Mr. Chairman, I am Michael Samuels, vice president, international, of the U.S. Chamber of Commerce, on whose behalf I am appearing today. The U.S. Chamber's membership has been expanding rapidly and now comprises more than 210,000 members. I appreciate the opportunity to contribute to these important hearings concerning U.S. trade policy. These hearings are particularly timely, coming as they do at the end of a year in which the merchandise trade deficit is estimated to be in the range of $40 billion. Hopefully, they will provide a much needed impetus to improving the current U.S. trade picture.

I am here today, Mr. Chairman, to call for action. A coherent U.S. trade policy aimed to improve U.S. export competitiveness is a matter of the highest national priority. We are generally disappointed at the failure of those in power to view exports as a major part of the mainstream of the American economy.

With a growing interdependent world economy, we must figure out how to take advantage of expanding opportunities beyond our borders.

The international rules of the trading game have changed in recent years. The U.S. Chamber has long believed in free trade. We still do. Yet, we are the first to realize that the real world marketplace is one in which free trade is a goal or standard to be strived for rather than a reality that exists.

Government interventions in the marketplace should be held to a minimum. However, the international marketplace is one in which other governments frequently intervene on behalf of their own business communities as part of a national comprehensive strategy. In such a context, the U.S. Chamber believes that it is both appropriate and, at this time, absolutely necessary for the U.S. Government to develop active policies that support our business throughout the world. Such support is not for the benefit of individual companies or particular industries. It is for the benefit of our entire economy, as well as serving to lower the unemployment rate.

Let me move now to some specifics.

The chamber has identified a few disincentives on which government action is needed. Let me summarize them.

First, Mr. Chairman, let me mention a disincentive which I am not including on my list. It is the former problems that existed with the U.S. taxation of American businessmen abroad. I would like to take this opportunity to thank the Congress, this committee, and you particularly, for the work done this year to correct that disincentive.

Second, the Foreign Corrupt Practices Act must be amended so that, while still keeping within the context of the original intent, the legislation is less ambiguous and pernicious.

Third, the U.S. response to international boycotts is comprised of a confusing set of policies, laws and regulations. There should, in our opinion, be a single antiboycott law, the Export Administration Act.

Next, there is need to address the antitrust laws as they affect or are perceived to affect export sales. There is helpful legislation pending before the House that is quite relevant here. I am referring to the antitrust provisions of the various export trading company bills now under consideration, as well as H.R. 2326, a bill to amend the antitrust laws to exclude from their application certain conduct involving exports.

A final disincentive: As the U.S. economy becomes more involved with the international economy, the tendency of a number of our laws to include extraterritorial extensions needs to be reconsidered. We support legislation that would create a commission to review this matter.

Let me move now to Government export incentives that we support. We do so with one key overall thought. The Government must demonstrate that its trade policy is based on realistic perceptions of the nature of international competition. On the incentive side, we recommend the following:

First, the Foreign Commercial Service (FCS) is a necessary adjunct to American business efforts in markets in foreign countries. It is essential that the FCS have the requisite financial and political support from Congress and the executive branch, otherwise some replacement must emerge.

Second, commercial diplomacy: The full force of the U.S. Government should be lent to expanding our exports and foreign investments. Ambassadors and Cabinet members should intervene to support major transactions, when necessary, as is done by many of our competitors.

Third, export financing: A large determinant in certain major export sales throughout the world is not product quality or price, but rather the terms of financing available to the purchaser. In many areas we no longer have the superior product or the best price. The U.S. Chamber urges the administration to continue vigorous efforts to eliminate the export subsidy practices of our trading partners that currently distort the international marketplace.

Until such an agreement exists, the Export-Import Bank should be given adequate funding, should maintain interest rates and terms necessary to insure U.S. competitiveness, and should avoid the export financing equivalent of unilateral disarmament.

Fourth, export trading companies: We would urge the House to speed up consideration of legislation to create export trading companies. Such organizations will go a long way toward providing opportunities for small- and medium-size businesses to become active participants in export markets.

Fifth, the Domestic International Sales Corporation—or DISC: The U.S. Chamber has actively supported the concept of the DISC since its enactment in 1971. We reassert that position today and call attention to the need for long-term certainty in it.

Sixth, the trade development program: To its credit a few years ago, the Congress recognized that prefeasibility studies have become key determinants of future contracts in many large international projects. This program is very important.

Seventh, mixed credits: In addition to subsidizing export credit rates, many governments are undercutting U.S. competitiveness by mixing foreign assistance funds with export credits, so-called mixed credits. Until this practice can be controlled through international agreement, the U.S. Government must be prepared to match such financing arrangements.

A special word, Mr. Chairman, about trade in services is appropriate. Since the early 1970's, the Chamber has urged improvement in U.S. trade policy relating to such trade. Service industries are an important part of our membership. The United States is the largest importer and exporter of services. We are internationally competitive in many services. However, our trade in services is subject to a growing wall of service trade barriers abroad.

We feel that services must be given the same degree of priority in our trade policy as are the more traditional areas of trade.

In testimony later in these hearings, we will address this need in greater detail.

Mr. Chairman, there are a series of general issues and some specific issues related to countries that justify close attention in the context of U.S. trade policy. I have expressed these in more detail in my full testimony that I hope will be included in the record of these hearings. But let me address some of the more important of each of these.

First, multilateral trade negotiations: The extent to which the MTN codes succeed in stimulating trade is a function of the degree to which the MTN codes are implemented. However, even if there is full compliance with the codes, a variety of tariff and nontariff measures will remain as impediments to U.S. export expansion. Negotiations should continue to minimize obstacles to the free flow of goods and services.

Second, trade with the developing world: Economic forecasts predict that the majority of the world's future economic growth will take place in Third World countries. However, unlike our competitors, particularly our Western European allies and Japan, the U.S. Government has failed to develop sufficient mechanisms supportive of U.S. firms seeking to pursue trade opportunities with developing countries.

In looking ahead to the expanding U.S. trade opportunities in the developing world, policy questions remain. First, why is it that the U.S. Government has yet to recognize the long-term economic and foreign policy advantages of coordinating and integrating its foreign trade and investment policies?

Second, will U.S. firms receive the Government support necessary to capture their fair share of these important Third World markets?

A third general issue, Mr. Chairman, is that of performance requirements, and I know you asked a question related to this of Mr. Morgan earlier.

Most developing countries find some form of assistance necessary for their small and newly developing industries. They develop certain policies to assure that as their countries develop, foreign-owned manufacturing facilities comply with performance requirements to export a percentage of output or to purchase components locally.

While this practice is understandable, especially in developing countries, there needs to be an international understanding that such trade-distorting actions be of limited duration.

Fourth, the area of East-West trade also deserves special attention. The U.S. Chamber has long supported expansion of East-West trade. We have been particularly concerned when the U.S. Government has restricted that trade for foreign policy reasons. While understanding that national security factors may justify certain kinds of trade restrictions, our Government has tended to define national security too broadly at times.

Furthermore, any imposition of trade restrictions in East-West trade must not be done unilaterally, but should be consistent with the actions of other major OECD member-governments. This has not always been the case.

Let me turn now to Eastern Europe. We have noted with concern an increasing tendency, despite rhetoric to the contrary, to lump together the countries of Eastern Europe and the Soviet Union as regards U.S. policy, and this is, in our opinion, a mistake. The dramatic evolution in some Eastern European economic systems in the direction of free market principles has been beneficial to U.S. businesses. The goal of U.S. trade policy should be to encourage such liberalized actions through greater access to the U.S. marketplace.

Time does not permit me to go into the country- and region-specific questions set out in my written testimony, but I would be pleased to answer questions on these.

Mr. Chairman, all Americans share a concern for our national security. For too long that security has been overly defined in military terms. Expanding exports and encouraging more of an international presence by U.S. firms is an intelligent, economic adjunct to national security policy in an era of interdependence. For the U.S. Government to opt out of the international marketplace, at precisely the moment when other governments are increasing their involvement, does our Nation a disservice. We call on both branches of Government to act together to encourage our Nation to improve its performance in the trade field.

In conclusion, may I say again that I appear today with the conviction that U.S. export competitiveness is a matter of the highest priority. A coherent U.S. trade policy is needed now more than ever. We at the U.S. Chamber believe that it is both appropriate and, at this time, absolutely necessary for the U.S. Government to develop policies to insure that its efforts are actively supportive of U.S. business throughout the world.

During this testimony I have outlined what the chamber thinks these efforts should be, both in terms of eliminating trade disincentives and strengthening incentives. The time for action is now.

We at the chamber reaffirm our commitment to play a dynamic and constructive role, working with you and the administration in this process of renewal.

Thank you.

Chairman GIBBONS. Thank you, Mr. Samuels. Your entire statement will be made a part of the record.

[The prepared statement follows:]

STATEMENT OF MICHAEL A. SAMUELS, VICE PRESIDENT, INTERNATIONAL OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

I am Michael A. Samuels, Vice President, International of the Chamber of Commerce of the United States, on whose behalf I am appearing today. The U.S. Chamber's membership has been expanding rapidly, and now comprises more than 210,000 members—over 200,000 small, medium, and large businesses, more than 1,350 trade and professional associations, over 2,738 state and local chambers of commerce, and 44 American chambers of commerce abroad.

I appreciate the opportunity to contribute to these important hearings concerning United States trade policy. Trade is of increasing significance to the United States government, to the United States economy, and particularly to the business community. These hearings are particularly timely, coming as they do at the end of a year in which the merchandise trade deficit is estimated to be in the range of $40 billion. We hope they will provide a much needed impetus to improving the current U.S. trade picture.

My goal today is six-fold:

(1) To make clear the U.S. Chamber's strong support for an activist national export policy;

(2) To underscore the importance of a government role in maintaining competitiveness in markets currently targeted by other governments on behalf of their economic interests;

(3) To identify several specific incentives and disincentives that need government attention;

(4) To stress the importance of the services industry to our trade policy;

(5) To identify a few general issues of emerging significance in the coming years; and

(6) To mention a few country- and region-specific issues that are worthy of special attention.

I am here today to issue a call for action. I am absolutely convinced that a coherent U.S. trade policy aimed to improve U.S. export competitiveness is a matter of the highest national priority. Too many economists, bankers, and government officials seem satisfied to place U.S. export performance behind a range of other factors that make up this country's national strength. Such a view is short-sighted, in that it fails to see the crucial role of exports in strengthening both the U.S. domestic economy and our overall global political/economic/military status.

The U.S. Chamber strongly supports the Reagan Administration's efforts in addressing the major domestic concerns in our economy. A healthy, inflation-free economy will help the entire world economic scene. The new tax incentives will help turn around the recent poor performance of the U.S. economy in the areas of productivity, growth, and new research. This will strengthen our competitive base and increase our export performance.

Still, additional efforts need to be undertaken that focus directly on our trade policy. The U.S. Chamber of Commerce, a few years ago, urged this nation to rebuild its economy. A significant part of this was an emphasis on the importance of exports. We are generally disappointed at the failure of those in power to view exports as a major part of the mainstream of the American economy.

The association between export expansion and increased employment and tax revenues continues to be overlooked. The statistics most commonly cited are for every billion dollars of manufactured exports 40,000 jobs are created, accompanied by a tax revenue contribution of $400 million.

There is a growing mutual dependence among nations for the exchange of raw materials, manufactured goods, and services. The challenge facing the United States is whether commercial interdependence will be allowed to become a threat to our economic security or whether we can see it as an opportunity for the further improvement of our own economy. The U.S. Chamber believes that it is clearly an opportunity.

To take advantage of that opportunity, we must understand that the international rules of the trading game have changed in recent years. The U.S. Chamber has long believed in free trade. We continue in this belief today. Yet, we are the first to realize that the real world marketplace is one in which free trade is a goal or standard to be strived for rather than a reality that exists. In striving for that goal, the U.S. Chamber would hope that government interventions in the marketplace would be held to a minimum. Nevertheless, we also understand that the international marketplace is one in which other governments frequently intervene on behalf of their own business communities as part of a national commercial strategy.

In such a context, the U.S. Chamber believes that it is both appropriate and, at this time, absolutely necessary for the U.S. Government to develop active policies that support U.S. business throughout the world. Such support is not for the benefit of individual companies or particular industries. It is for the nation's benefit, for the entire economy, and, it serves to lower the unemployment rate.

U.S. policy should encourage the expanded export of those products or services in which we have the greatest competitive edge or in which there is relative competitive equality. This includes agricultural exports, manufactured exports, and service exports. Indeed, there may be some industries in which we do not have a competitive edge. These industries are unlikely to be major export gainers and may, in fact, be those most likely to lose portions of their domestic market to foreign competition.

GOVERNMENT DISINCENTIVES AND INCENTIVES

In recent years, both Congress and the executive branch have been more responsive to the need to reduce or eliminate various forms of government-imposed disincentives to exports. The following listing summarizes the Chamber's recommendations for action on those many specific export disincentives that remain.

1. Overseas Business Practices.—The Foreign Corrupt Practices Act should be amended so that, while still keeping within the context of the original intent, the legislation is less ambiguous and pernicious. We urge the House to pass H.R. 2530, the companion piece to S. 708 that passed the Senate on November 23.

2. Antiboycott Laws.—The U.S. response to international boycotts is comprised of a confusing set of policies, laws, and regulations: the Export Administration Act (EAA) of 1979 and the related Commerce Department regulations and the Tax Reform Act of 1976 (section 999) and the accompanying Treasury Department regulations. The proper scope of antiboycott provisions of U.S. law is to prevent the extension of the effects of foreign boycotts into U.S. domestic commerce or the commerce of the United States with nations other than boycotting nations. To the extent that the provisions of these laws accomplish this, they represent legitimate objectives of our government. There are, however, provisions which create serious problems and should be remedied to ensure that the potentially harmful effects of the legislation do not exceed congressional intent to protect U.S. persons from discriminatory boycotts.

Specifically we recommend the following:

There should be a single antiboycott law—the Export Administration Act. The tax antiboycott laws, section 999 of the Internal Revenue Code, should be repealed.

The EAA should be amended to:

(a) permit U.S. firms to provide information already publicly available, such as annual reports;
(b) minimize the extraterritorial reach of the law;
(c) eliminate the prohibition on negative certificates of origin; and
(d) simplify reporting requirements.

3. Antitrust.—There is need to address the antitrust laws as they affect, or are perceived to affect, export sales. There is legislation pending before the House that is quite relevant here. I am referring to the antitrust provisions of the various export trading company bills now under consideration, as well as H.R. 2326, a bill to amend the antitrust laws to exclude from their application certain conduct involving exports. I would urge that this matter be addressed expeditiously.

4. Extraterritoriality.—As the United States economy becomes more involved with the international economy, the tendency of a number of our laws to include extraterritorial extensions needs to be reconsidered. We support S. 432 that would create a commission to review this matter, but urge that its scope be extended beyond consideration solely of the antitrust laws to encompass the generic issues associated with extraterritoriality.

5. Overseas Taxation.—One disincentive formerly on our list of concerns, the taxation of Americans abroad, has been greatly alleviated this year. This Committee, in particular, is to be commended for its action on this issue.

In a more positive view, government can do much to provide effective incentives to export activity. In addition to tangible program initiatives, the government must also demonstrate that its trade policy is based on realistic perceptives of the nature of international competition.

In the so-called non-market or socialist nations, government intervention is, of course, the rule. Even in the market economies of the West, nationalized industries are widespread. When either of these systems engage in international trade, they can do so without regard to the invisible hand of market forces.

Of even more significant concern to American industry, however, is the degree to which foreign governments are prepared to support the export activities of their privately-owned industries. Here they are acting on their clear perception that national goals of full employment, among others, can be achieved only if their most efficient industries attain optimum levels of production. Because of their smaller domestic markets, our foreign competition can only achieve their desired production runs by winning foreign markets. This realization is behind the very aggressive export promotion programs of Japan, Germany, France, and other leading trade powers. Currently, when strong export promotion is added to the price advantage of their weakened currencies, they enjoy rich opportunities to win new foreign markets and thereby alleviate domestic unemployment and eventually strengthen their currencies.

When compared to our competition, the long-term implications of prevailing U.S. trade policy are not encouraging. Markets are being lost that would be ours if foreign trade were truly competitive. Those markets would provide jobs and income for American labor and industry for years to come. They would help generate some of the revenues needed for the expansion and modernization of U.S. industry and contribute to tax revenues at all levels.

Based on the strong relationship between domestic economic goals and an active export sector, the logic for supporting a range of specific programs becomes compelling.

1. *The Foreign Commercial Service (FCS).*—This Department of Commerce activity is a necessary adjunct to American business efforts overseas. In the real world, where governments work hand-in-hand with their international business, it is essential that the FCS have the requisite financial and political support from Congress and the Executive Branch to assist U.S. Businesses in penetrating foreign markets.

2. *Commercial Diplomacy.*—The full force of the U.S. Government should be lent to expanding our exports and foreign investments. Ambassadors and cabinet members should intervene to support major transactions when necessary, as is done by many of our competitors. We applaud the fact that Secretary Haig has instructed U.S. ambassadors to be more diligent in this regard. We have observed several noticeable examples of a new energy here—for example, in South Korea where Ambassador Walker has actively been promoting U.S. business interests.

3. *Export Financing.*—A large determinant in certain major export sales throughout the world is not product quality or price but rather the terms of financing available to the purchaser. In many areas, we no longer have the superior product or the best price. Many individuals within and outside the U.S. Government do not understand the importance of government export financing to our overall trade policy. This reflects, in our belief, both a lack of interest in trade as an important factor in the American economic recovery and a lack of contact with the realities of the international marketplace. Such reasoning is economically and politically unsound.

4. *An International Agreement on Financing Subsidies.*—The U.S. Chamber urges the Administration to continue vigorous efforts to eliminate the export subsidy practices of our trading partners that currently distort the international marketplace. Until such an agreement exists, the Export-Import Bank should be given adequate funding, should maintain interest rates and terms necessary to ensure U.S. competitiveness, and should avoid the export financing equivalent of unilateral disarmament.

5. *Import Dependency.*—Our nation's economy has traditionally blossomed because of a satisfactory domestic market. This situation no longer exists. We must export now because we have become dependent on the import of a variety of raw materials critical to our economy. In addition, many other countries are now producing manufactured products that sell more cheaply in our markets or have a higher quality, thus serving the interests of our consumers. This means we are importing more. To balance this, we need to encourage the mainstream of our economy to take a greater interest in the international marketplace.

6. *Export Trading Companies.*—In the above context, we would urge the House to speed up the consideration of the legislation to create export trading companies. Such organizations would go a long way toward providing opportunities for small and medium-sized businesses to become active participants in export markets. I find it difficult to understand why this legislation has languished so long, particularly at a time of national concern about improving our economy and considering that this legislative proposal is practically cost free to the taxpayer.

7. *Domestic International Sales Corporation (DISC).*—The U.S. Chamber has actively supported the concept of the DISC since its enactment in 1971 and opposed any elimination or reduction of DISC benefits. We wish to reassert that position today and to call attention to the need for long-term certainty. Over this year, DISC's uncertain future has, in itself, been a disincentive to its use. Specifically, we recommend that the DISC be broadened by: eliminating the "incremental rule," allowing greater freedom of investment for DISC earnings, extending DISC eligibility to export trading companies, and expanding its availability to the service sector. Emphasis should be placed on a reasonable administration of tax laws which does not frustrate Congressional intent by being overly technical.

It is quite possible that DISC and the export tax systems of other countries may soon be acted upon by the General Agreement on Tariffs and Trade (GATT) Council. Regardless the outcome of any GATT action, we maintain that preservation of DISC (or a tax system at least as beneficial as it), is essential for an effective U.S. export program.

8. *Trade and Development Program (TDP).*—To its credit, a few years ago, Congress recognized that prefeasibility studies had become key determinants of future contracts in many large international projects. Many other competing countries

realize this and provide significant funding to their nationals for such studies. Funding for TDP should be reviewed, funding and the importance of this program should be more widely understood.

9. Mixed Credits.—In addition to subsidized export credit rates, many governments are undercutting U.S. competitiveness by mixing foreign assistance funds with export credits. Until this practice can be controlled through international agreement, the U.S. Government must be prepared to match such financing arrangements.

TRADE IN SERVICES

A special word about trade in services is appropriate. Since the early 1970s, the Chamber has urged improvement in U.S. trade policy relating to such trade. Service industries are an important part of our membership, but the Chamber's concern with trade in services includes other considerations.

The United States has the world's largest domestic service economy and has the largest service labor force. We are the largest importer and exporter of services and are internationally competitive in many services, such as banking, insurance, and transportation. Finally, we have a positive and growing services trade balance. In 1980, the U.S. services, or invisible trade account, which includes U.S. exports and imports of services as well as investment flows, fees, and royalties produced a $38 billion net surplus. This more than offset the $25 billion deficit suffered in merchandise trade. However, our trade in services is subject to a growing wall of service trade barriers abroad.

As you will recall, Congress provided authorities to reduce barriers to trade in services in the Trade Act of 1974. For a number of years afterward, the Chamber and our International Insurance Advisory Council were virtually alone in recognizing the importance of these benchmark provisions and in directing energy toward identifying and resolving problems faced by the Executive Branch in using them. However, after a slow start, since 1979 the key government trade agencies have initiated activities directed toward liberalizing trade in services. Also, other trade associations and industry groups have awakened to these critically important problems. In contrast to the situation in the early 1970s, the well-being of our international trade in services is a recognized concern of U.S. industry, as well as the U.S. Government policy-formulating community as well.

However, we now face the real problem—to convince our trading partners to reduce barriers to our service exports. In general, we feel that services must be given the same degree of priority in our trade policy as are the more traditional areas of trade. In testimony later in these hearings, we will address this need in greater detail.

GENERAL ISSUES

There are a series of general issues and some country-specific issues that are sufficiently important to justify close attention in the context of U.S. trade policy. Let me address some of the more important of each of these.

Multilateral Trade Negotiation (MTN).—The ability of the United States to expand its exports can be severely impaired by foreign barriers to trade. Through much of the 1970s, the United States participated in the "Tokyo Round" of the Multilateral Trade Negotiations in order to reduce tariffs and to formulate a series of codes to establish international trading discipline in a number of nontariff areas. The extent to which these codes succeed in stimulating trade is a function of the degree to which the MTN codes are implemented. However, even if there is full compliance with the codes, a variety of tariff and nontariff measures will remain as impediments to U.S. export expansion. Negotiations should continue to minimize obstacles to the free flow of goods and services.

Relationship Between Trade Policy and Economic Development.—U.S. trade with the developing world is mutually beneficial. It provides jobs, economic growth, and revenues both at home and abroad. The goods and services supplied by U.S. companies contribute to the infrastructural, industrial, and consumer growth necessary for Third World economic development. The level of U.S. trade, along with U.S. private foreign investment and U.S. government economic assistance, defines the strength of our economic and commercial relationships with the developing countries.

The developing world, whose markets are growing at 20 percent a year, currently absorbs approximately 37 percent of U.S. exports, a share larger than that of U.S. exports to all other countries except Canada. Economic forecasts predict that the majority of the world's future economic growth will take place in Third World countries. However, unlike our competitors, particularly our Western European allies and Japan, the U.S. government has failed to develop sufficient mechanisms supportive of U.S. firms seeking to pursue these trade opportunities with developing countries.

But, the Reagan Administration has acted by calling attention to the important role of the private sector in development. The addition of a new bureau in the Agency for International Development (AID) to encourage private sector development is to be commended. It is clear that U.S. foreign assistance can play an even more effective role in such development. The private sector in the least developed countries cannot prosper without adequate public sector infrastructure in the form of such facilities as electricity, water, and transportation.

Most other industrialized countries recognize the importance not only of strong government support for their private sectors overseas but also of the efficiency and effectiveness that can be achieved by using foreign economic policy tools to achieve long-term policy goals. The U.S. government needs to do likewise. U.S. firms increasingly are losing out in Third World markets to foreign government-supported competition. The resulting adverse impact on our domestic economy should be fully understood by now.

In looking ahead to the expanding U.S. trade opportunities in the developing world, two policy questions remain—

1. Why is it that the U.S. government has yet to recognize the long-term economic and foreign policy advantages of coordinating and integrating its foreign trade, aid, and investment policies?

2. Will U.S. firms receive the government support necessary to capture their fair share of these important Third World markets?

Performance Requirements.—Most developing countries find some form of assistance necessary for their small and newly developing industries. They develop certain policies to assure that, as their countries develop, foreign-owned manufacturing facilities comply with so-called "performance requirements" to export a percentage of output or to purchase components locally. While this practice is understandable, there needs to be an international understanding that such trade-distorting actions be limited in duration. Attacking such practices wholesale may be unwise, as it would put the United States on a collision course with other governments over their fundamental development strategies.

The Cancun Summit provided the Reagan Administration with an excellent opportunity to develop a trade policy aimed at expanding world development. As the Administration has said clearly, it is in the interest of the United States to see developing countries become active players in the international economic mainstream. To foster this development, we must resist the temptation to construct unnecessary protective barriers. Other countries, as well, must refrain from putting up barriers to our investment and trade. The U.S. Chamber is increasingly using the range of its international connections to work within the U.S. government to seek elimination of such foreign barriers.

COUNTRY-SPECIFIC AND REGION-SPECIFIC ISSUES

As you may know, the U.S. Chamber administers 17 Business Councils—joint undertakings between United States business leaders and their counterparts in a number of countries throughout the world. Furthermore, among the U.S. Chamber's members are 44 American chambers of commerce abroad (AmChams) comprised largely of American businessmen resident abroad and doing business for American companies there. The Business Councils and the AmChams provide us with an awareness of the problems caused by U.S. policies from the point of view of business people on the scene.

JAPAN

We understand that the key trade balance to observe is the overall balance, not each bilateral balance. Still, there are some bilateral relationships that justify special attention within the context of overall policy. The most obvious country where this is true is Japan.

Our estimated merchandise trade deficit with Japan of $15 billion this year is astonishing. Some analysts see little that will improve the situation in the future without conscious efforts by leaders of both countries. The Japanese government goes out of its way to help its companies in international trade in ways that ours does not and in certain instances should not. However, the economic and the political effects of our giant trade deficit must be understood by Japanese leaders as at least as much their problem as ours. The Reagan Administration has made serious and, we believe, praiseworthy attempts to improve this situation, but much more needs to be done, particularly as concerns barriers to our agricultural exports and a range of Japanese nontariff barriers. We continue to oppose protectionist solutions in this country to the trade imbalance, but the Japanese must be made aware that the political and emotional winds are blowing on this issue and may eventually prevail.

Here I commend the chairman of this Subcommittee and other members of Congress for submitting your October 23 letter to Prime Minister Suzuki. We at the U.S. Chamber share your "deep sense of urgency in seeking actions which would further free trade rather than protectionism." And we share your hope that your "sincere extension of concern will be of assistance" to Prime Minister Suzuki and President Reagan "in helping to chart a trade course which will benefit all our peoples." I am also pleased to note that the American Chamber of Commerce in Japan is devoting a tremendous amount of time and effort in urging the Japanese to remove remaining barriers to trade and investment.

CANADA

Let me turn next to Canada. The Chamber's Board of Directors recently expressed its concern over procedures followed by Canada's Foreign Investment Review Agency (FIRA), which are causing increasingly serious difficulties in the United States and abroad as an impediment to capital flows and commercial relations. As you know, FIRA was established in the early 1970s to screen foreign direct investment according to an ambiguous criteria of "significant benefit to Canada." Although FIRA has a relatively low disapproval rate, this provides little encouragement to prospective investors, as it does not reflect the many investments that may have been deterred by the presence of FIRA.

The core of the problem is that FIRA invokes procedures that are poorly communicated and apparently arbitrary, thereby fostering a climate of uncertainty for U.S. and other foreign investors who are unable to determine the kinds of investments that will or will not be approved. Moreover, FIRA raises serious concerns about the ability of foreign investors in Canada to receive fair value on the disposition of Canadian assets.

Not only is FIRA of concern at present, but there is also real concern regarding its future role, particularly in such areas as: retroactive application of the FIRA guidelines; publication of major acquisition proposals; and Canadian government assistance to Canadian companies wishing to bid for ownership or control of companies subject to takeover efforts by non-Canadians.

The Board of Directors of the U.S. Chamber considered this issue of FIRA procedures so serious that a formal resolution was agreed upon. We, therefore, strongly urge the U.S. government to continue to consult and negotiate with the Canadian government to examine and rectify those Canadian practices which:

> create unnecessary confusion, uncertainty, and delay; and
>
> are inconsistent with such international obligations as Article III (concerning National Treatment) of the General Agreement on Tariffs and Trade, and the National Treatment Principle of the 1976 Declaration on International Investment and Multinational Enterprises of the Organization for Economic Cooperation and Development.

I would note that the Canadian Chamber of Commerce, in a letter dated October 30, has clearly expressed concerns similar to ours to the Honorable Herb Gray, Minister of Industry, Trade and Commerce.

The importance of this issue to both our nations cannot be overemphasized. Twenty-one percent of all U.S. foreign direct investment abroad is in Canada—some $45 billion. Reciprocally, Canada has a huge stake in the U.S.; 15 percent of total foreign direct investment in the U.S. is Canadian—some $10 billion. My point is that this sharing brings enormous benefits, but also responsibilities. The Chamber is also examining its policy toward Canada's National Energy Program.

WESTERN EUROPE

Let me make a few observations about our economic relationship with Western Europe. Although this region is currently plagued with problems of economic stagnation, high unemployment, and structural rigidity in its traditional industrial sectors, it remains our preeminent trade and investment partner. In 1980, our exports to all of Western Europe were over $67 billion

The preservation and future expansion of commercial relations with our European friends remains a vital goal for national security, as well as for economic reasons. The present economic malaise in Western Europe could, however, have a disruptive effect on those relations. Unemployment levels have risen to an average figure of 8.5 percent, a level unprecedented in the post-war history of this region. The political consequences of stagflation and joblessness are generating within many Western European governments intense pressure to take actions in conflict with U.S. economic interests.

Let me single out two significant manifestations of Western European policies which threaten our immense economic stakes in that region. First, several measures that would impede trade loom large on the transatlantic horizon. The serious difficulties faced by steelmakers in several European Community countries could result in government subsidization measures or pricing policies for steel exports to our markets that would be incompatible with a fair trading relationship. Nor should the U.S. accept actions by the E.C. to subsidize agricultural exports, especially those going to third country markets where they compete with our own agricultural exporters. I would urge the Congress to support an Administration policy of firmness and tact in the search for solutions to these issues with our European partners.

Second, another troublesome area of fundamental significance for U.S. economic policy in Western Europe is the all-too-frequent tendency for segments of the European public and political parties to see, as the source of all their economic ills, the multinational enterprise—and, in particular, the American multinational. Increasingly, this is leading to the creation of regulatory restrictions that discourage new American investment and hamper the operation of existing enterprises. In my view, the long-term answer to joblessness in Western Europe lies in stimulating new investment and strengthening the efficiency of Europe-based enterprises. Current proposals within the E.C. to impose complex and unworkable new procedures on the management of multinational enterprises, as illustrated by the so-called Vredling directive, can only diminish the significant contribution U.S. companies are making—and could continue to make—to building stronger transatlantic economic ties. Here, too, is a policy area where the U.S. government should be at once firm and tactful in its support of American business operating abroad.

EAST-WEST TRADE

The area of East-West trade is also one that deserves special attention. The Chamber has long supported an expansion of East-West trade. We have been particularly concerned when our government has restricted that trade for foreign policy reasons. While understanding that national security factors may justify certain kinds of trade restrictions, there has been a tendency by our government to define national security unnecessarily broadly on occasion. Furthermore, any imposition of trade restrictions in East-West trade should not be done unilaterally, but should be consistent with the actions of other major Organization for Economic Cooperation and Development (OECD) member governments, which has not always been the case.

Let me mention a few specific items in this context. Lingering uncertainties as regards U.S. government support for trade with the Soviet Union has resulted in a diminishing business interest in East-West trade. Several prominent companies have made corporate decisions to pull out of the Soviet market in the last year. There has been a dramatic decline in trade fair participation in the Soviet Union on the part of U.S. firms; at the same time, European and Japanese firms are expanding their involvement. Similarly, instances have been brought to our attention where European firms have been signing contracts for equipment that the U.S. government is not even allowing American firms to exhibit.

The unclear U.S. export control policy needs to be remedied. Foreign policy controls, such as in the gas and oil field sector, have been a major contributing factor to the unpredictability of the process. The Administration understands the need for a multilateral policy in this area. Still, the Yamal natural gas pipeline through the Soviet Union illustrates our need to be more sensitive to European perceptions and the losses to our economic interests when we either move too slowly or act unilaterally.

The Reagan Administration, especially the Commerce Department, has acted correctly in tackling the tremendous backlog of export licenses. Substantial progress has been made.

Let me turn now to Eastern Europe. We have noted with concern an increasing tendency, despite rhetoric to the contrary, to lump together the countries of Eastern Europe and the Soviet Union as regards U.S. policy. This is a mistake. The dramatic evolution in some Eastern European economic systems in the direction of free market principles has been beneficial to U.S. business. The goal of U.S. trade policy and actions should be to encourage such liberalized actions through greater access to the U.S. marketplace. Tightening the screws on Eastern Europe will only hurt such reforms.

Finally, as regards China, we are pleased with policy pronouncements earlier this year liberalizing trade with the People's Republic of China. These actions have encouraged private U.S. business initiatives in China—so much so that there are now enough American businessmen resident in China that last month they formed the first American chamber of commerce there. We hope that this more forthcoming policy leads to an increasing liberalization in licensing.

This is a good example of where the U.S. government must provide direct assistance if U.S. business is to take full advantage of the China market and is to be competitive with firms from Japan and Europe. Gaining our fair share here requires an effective and adequate Export-Import Bank, Trade and Development Program, Overseas Private Investment Corporation (OPIC), and other programs.

SOUTHEAST ASIA

The countries comprising the Association of Southeast Asian Nations (ASEAN) also pose special challenges to U.S. trade policy. Indonesia, Malaysia, the Philippines, Singapore and Thailand represent a combined market of 260 million people where economic growth rates have averaged 7-9 percent per year since 1970, equal to or exceeding all other middle income countries. It is interesting to note that U.S. exports to the region increased 34 percent last year over 1979—a rate higher than any other region of the world and one that, if continued, will establish ASEAN as our number one trading partner by the 1990s.

Ironically, despite these favorable trends, our companies have been losing market share and bids on major projects to our trade competitors from Europe and Japan. In particular, the Japanese presence is highly visible. For every one U.S. business visitor to the region, I would guess there are 10 from Japan. Certainly, this can be explained in part by the proximity of Japan to Southeast Asia. But, of more significance is the relationship between our government and the private sector in confronting the Japanese challenge in these markets.

During a recent meeting of our ASEAN-U.S. Business Council in Malaysia, it was interesting to note that the more than 200 senior level, U.S. and ASEAN business leaders there identified as their major concern the inadequate levels of U.S. government support for U.S. firms competing in the region. Specifically, in order to provide U.S. exporters with the means to compete on credit terms with exporters from other countries, the joint Council urged the U.S. government to provide funding for the Export-Import Bank at rates that are competitive with other supplier credits. A competitive Export-Import Bank is important to ASEAN for political as well as commercial reasons. Without adequate export financing capabilities from the United States, ASEAN purchases are forced into even greater dependency on Japan for such items.

This region is also becoming increasingly attractive to U.S. investors. Our government should strengthen its efforts to encourage the ASEAN economies to establish hospitable environment to investment by clear regulatory frameworks, consistent application of standards, and prompt processing of investment proposals. In this regard, the Council will begin an examination of the utility of negotiating bilateral investment treaties to facilitate two-way investment flows between ASEAN and the United States.

LATIN AMERICA

Geographic proximity and shared history long ago created a unique relationship between the U.S. and the countries in the Latin American/Caribbean region. The nature of the relationship has changed over time, but its intensity and importance continue to grow.

From a trade point of view, U.S. exports to the region have more than quintupled in the last 15 years to over $37 billion in 1980. These trade flows account for over 40 percent of total U.S. exports to all developing countries. In two-way trade, the U.S. has continually maintained a favorable balance of merchandise trade, with a $4.5 billion trade surplus last year.

On the other hand, U.S. imports from these countries have also dramatically increased. The foreign exchange earnings from these sales are integral to the economic development objectives of these countries and necessary receipts for the purchase of U.S. goods and services. President Reagan at Cancun indicated his encouragement for these countries to expand their use of exports for development. The well-intentioned Caribbean Basin Initiative is a good step. Like many others, we maintain an interest in the specifics of how it is to be formulated.

MIDDLE EAST

While the Middle East region offers enormous and varied trading opportunities for U.S. companies, it is also a uniquely difficult area of the world in which to conduct business. As a result of a combination of cumbersome U.S. and foreign government regulations, U.S. companies often must assume greater risks than they are accustomed to taking in other parts of the world, and the competition is very stiff. There is much concern within the business community that contractors and suppliers are losing out in these lucrative markets. For example, our exports to the Middle East as a percentage of exports to the rest of the world have declined steadily over the past several years, from 10.3 percent in 1978 to 7.9 percent in 1979 to 7.0 in 1980. Nevertheless, in 1981 U.S. exports to the region are expected to reach $18 billion.

Conflicting U.S. antiboycott laws and regulations, ambiguous provisions of the Foreign Corrupt Practices Act, and federal antitrust regulations limit the willingness of many U.S. firms to enter Middle East markets. Many Middle East governments also impose restrictive conditions on foreign firms. One example of particularly onerous regulations involves the requirement for unconditional bid, performance, and advance payment guarantees for construction, service and supply contracts. These requirements carry a high degree of political risk for U.S. companies because, unlike our competitors, there is insufficient U.S. government support to back up U.S. companies. Contracts in the Middle East are being lost or never bid on in the first place because of these conditions. The Chamber currently is looking at a number of alternatives to try to redress this situation.

CONCLUSION

In conclusion, may I say again that I appear here today with the conviction that U.S. export competitiveness is a matter of the highest priority. A coherent trade policy is needed now more than ever. We at the Chamber believe that it is both appropriate, and at this time, absolutely necessary for the government to develop policies to ensure that its efforts are actively supportive of U.S. business throughout the world. During this testimony, I have outlined what the Chamber thinks these efforts should be, both in terms of eliminating trade disincentives and strengthening incentives.

All Americans share a concern for our national security. For too long, that security has been overly defined in military terms. Expanding exports and encouraging more of an international presence by United States firms is an intelligent economic adjunct to national security policy in an era of interdependence. For the U.S. government to opt out of the international marketplace at precisely the moment when other governments are increasing their involvement does our nation a disservice. The United States business community wishes to be partners with other nations and with our own government in strengthening our economy and the growth and security of the entire world.

The time for action is now. We at the Chamber reaffirm our commitment to play a dynamic and constructive role working with you and the Administration in this process of renewal.

Thank you.

Chairman GIBBONS. I wonder if you would go back and cover for me the part on page 16 about Japan. I did not get a chance to read it while you were going through it, and I would like to see what your views are.

Mr. SAMUELS. Would you like me to read that into the record?

Chairman GIBBONS. I think so. I did not get a chance to read it because I was trying to listen to you.

Mr. SAMUELS. We understand that the key trade balance to observe is the overall balance, not each bilateral balance. Still, there are some bilateral relationships that justify special attention within the context of overall policy. The most obvious country where this is true is Japan.

Our estimated merchandise trade deficit with Japan of $15 billion this year is astonishing. Some analysts see little that will improve the situation in the future without conscious efforts by leaders of both countries. The Japanese Government goes out of its way to help its companies in international trade in ways that ours does not and in certain instances should not. However, the economic and the political effects of our giant trade deficit must be understood by Japanese leaders as at least as much their problem as ours.

The Reagan administration has made serious and, we believe, praiseworthy attempts to improve this situation—and I note in today's newspapers reports of continuing attempts by Deputy U.S. Trade Representative David Macdonald in the last couple of days in Japan, and we applaud those attempts—but much more needs to be done, particularly as concerns barriers to our agricultural exports and a range of Japanese nontariff barriers. We continue to oppose protectionist solutions in this country to the trade imbalance, but the Japanese must be made aware that the political and emotional winds are blowing on this issue and may eventually prevail.

Here I commend you, Mr. Chairman, and other Members of the Congress for submitting your October 23 letter to Prime Minister Suzuki. We at the U.S. Chamber share your "deep sense of urgency in seeking actions which would further free trade rather than protectionism." And we share your hope that your "sincere extension of concern will be of assistance" to Prime Minister Suzuki and President Reagan in "helping to chart a trade course which will benefit all our peoples." I am also pleased to note that the American Chamber of Commerce in Japan is devoting a tremendous amount of time and effort in urging the Japanese to remove remaining barriers to trade and investment.

Chairman GIBBONS. Thank you, sir.

I have now noticed your part on Canada. I won't ask you to read it but could you summarize your Canadian views?

Mr. SAMUELS. We will be happy to. The chamber's board of directors has been very concerned about activities in Canada, especially the procedures followed by the Foreign Investment Review Agency. We are pleased to say that we have been working to get the Canadian Chamber of Commerce and the Canadian business community to try to express not just our concern but their concern as well about the recent activities against our business interest by the Canadian Government. We are hopeful that the combination of those activities in Canada by Canadian businesses and, hopefully, by the Reagan administration will do something to cause the Canadian Government to improve its current policies.

Chairman GIBBONS. I witnessed the other night by accident on television, the final ratification by the Canadian Senate of their constitution. I hope that exercise in unification of their country will help moderate to some extent what I think have been very aggressive, overly aggressive, exercises in economic nationalism on their part. Perhaps they had to go through their economic nationalism exercises in order to get enough team spirit together to finally get that constitution through.

If that is true I hope they have gotten that out of their system by now. I have been very disturbed. I think Canada has been weakening itself by its almost hostility to foreign investment.

Now, I have to admit in the same breath that United States investment in Canada is so much larger than the Canadian investment in the United States not only in dollar amount but in proportion, that if I were a Canadian my views might be different.

But I am worried about Canada. We need them as a strong trading partner. We need them as a strong economic neighbor and it looked like they were rather intent on driving out investment.

It is certainly discouraging and I don't think Canada has so much capital that it can afford to drive out capital.

Even this country does not have enough capital to be able to afford to drive out capital.

So I would hope that the Canadians are making progress.

On the Japanese situation, we do face serious problems. I would not associate myself with those who claim that our feelings are almost racist in view, because they are not that. I know that there had to have been some ill will left between the two nations as a result of World War II but that, thank God, has largely, I believe, been diminished.

I don't find it on either side of the ocean as I visit there, but there is certainly an insensitivity by the Japanese Government, I think, mainly as to the need to straighten out this matter. In this committee's visit to Japan and talking with the Japanese businessman we found that the Japanese businessman, of course while he was looking after his own security, was very well aware, at least he expressed himself of being aware of the problem of the trade imbalances.

But none of that has been transformed so far into constructive action. I would hope that this will be a successful mission that Mr. Macdonald is carrying on over there. Certainly a great deal needs to be done in that area.

I want to commend the chamber of commerce. We found that whenever we visited around the world they were progressively promoting the interests of our country.

Mr. Schulze.

Mr. **Schulze**. Thank you, Mr. Chairman.

Maybe I will just follow up on Japan a little bit. I agree, very much, Dr. Samuels, with your statement on Japan and perhaps I would go a little bit further. I am one of those who think the time for talking has somewhat passed and it is time to take some action.

We have been talking for a long time. We have gotten a few inches here and there but the message I am receiving is that they believe we will continue to talk and smile and there will be no action taken.

I think the time has come to act and not just talk. Perhaps the new round of talks and meetings will bring some definitive progress so that that would not be necessary.

Dr. Samuels, the chamber has a small business division, don't they?

Mr. **Samuels**. Yes, sir.

Mr. **Schulze**. I am going to pose to you the same question I did to Mr. Morgan.

Do you see a growing awareness of foreign competition, especially among the medium- and small-size businesses?

I would like to reiterate a little bit the fact that the problem with automobiles is like the mule and the 2-by-4 and would get the attention of the business community.

I am afraid as I travel around the country I don't see that that has happened. Maybe I am not getting the right perspective. What do you see from your position?

Mr. **Samuels**. Thank you for that question, Mr. Schulze. It was one I was hoping you would ask me because it is a subject that interests me and the U.S. Chamber greatly.

As you know, a very high percentage of our members are small- and medium-size businesses, precisely that group about which you have asked the question. We would note, without having taken a survey to prove it, an increase of awareness of foreign competition, and we think that some of the current calls for protectionism partially result from that awareness.

We note a slightly increased interest in small- and medium-size business in taking advantage of export opportunities that exist, but in our judgment there are some things that could be done to expand that interest considerably.

It is precisely because of our hope that small- and medium-size businesses will take greater advantage of export markets that we have been so strongly supporting the legislation to facilitate the formation of export trading companies, because we believe that such institutions would help small- and medium-size businesses, many of which are inhibited by a range of Government regulations, antitrust problems, lack of having the overseas representation necessary, failure to have language skills and a whole series of things like that. Thus, we believe that if there is any single piece of legislation that could help small- and medium-size businesses get into exporting, it is the export trading legislation.

The U.S. Chamber believes that it has a role to play, being, after all, the organization to which many of these companies that you ask about belong. We have tried to advance the message about international competitiveness. We have initiated a program that will begin next year of taking businessmen to Japan to address the question of productivity.

We have increased the amount of information and stories in our various publications and in our other media formats that will get the message of the international marketplace out to precisely those people.

So I would hope that a year from now, if I am asked to appear back before you, Mr. Schulze, I can say that we have had even more of an expansion of awareness, because I think such an awareness is of great importance.

Mr. **Schulze**. Let me encourage you in your efforts. It seems to me that the first way to solve this is to develop an awareness of the situation.

Let me also encourage you to encourage these small- and medium-sized businesses to attend trade fairs and other such operations even if they don't make any sales. I think that is part of the growing level of awareness of the situation.

I have been stating to the business community in my travels that no matter what product or service they deal in, someone, somewhere in the world is looking at their market and is going to get it if they continue to wear blinders.

Whatever you can do to get that message out, I would encourage you to continue.

Mr. **Samuels**. As I said in my statement, as long as we are living in a period when interdependence has become an economic reality, it is absolutely necessary that the mainstream of our economy, which, after all, are small- and medium-size businesses, are encouraged and helped to take advantage of the opportunities that exist out there.

The U.S. Chamber vows that it is going to be part of that process.

Mr. **Schulze**. Well, that is good news. Keep up the good work.

Thank you, Mr. Chairman.

Chairman **Gibbons**. I want to agree with Mr. Schulze and add a little something to it. I applaud your statement on page 2 where you say too many economists, bankers, and Government officials seem satisfied to place U.S. export performance behind a range of other factors that make this country's national strength.

I think the time has long past. It certainly is not too late but it certainly is long past. We set out as business leaders, Government leaders, and all types of people who are interested in it and agree that our export performance is a matter of deep national concern and a very high priority.

I think we are taking, by and large, too restricted a view of our markets. Other nations seem to think of the world as being their market.

Some American concerns think of the world as being their market but, by and large, we are still very provincial in our approach to what is our market and what we can do and I think that you hit the nail right on the head, right there in that statement.

Mr. **Samuels**. I look forward to the next piece of analysis that defines supply-side economics in a worldwide context, Mr. Chairman.

Chairman **Gibbons**. Well, if it does not define it in those terms it is highly inaccurate because I think anyone who has witnessed, as I have been privileged to witness for 20 years now, the functions of the U.S. economy, it cannot be isolated from the world economy. It cannot be isolated from world markets and unless we realize that we are doomed to make ourselves failures.

We can't tinker with our own internal economy and expect it to respond when the driving forces in this economy are really beyond our national borders and we have got to live in that kind of environment, that kind of understanding and that kind of world.

Mr. **Schulze**. Would the chairman yield?

Chairman **Gibbons**. Yes, sir.

Mr. **Schulze**. Perhaps, Dr. Samuels, you can aid me in a personal little crusade. I think right now there are great opportunities for revitalization of the Northeastern part of our country and one of the reasons for that is because they have been in a decline.

By taking these businessmen to Japan, I am sure they will be impressed by robotics, and I believe that robotics can be the salvation of the Northeastern part of our country.

Carnegie Mellon has a robotics group up there, as you are probably aware, that is doing tremendous things. It is my personal view that the Northeastern part of this country can take advantage of this and move into the next generation and have some of the most efficient production anywhere in the world if we just get that spark going.

So, again, anything the chamber can do to aid in that cause and effort will be very much appreciated.

Chairman GIBBONS. Will the gentleman yield on that?

Mr. SCHULZE. Yes, sir.

Chairman GIBBONS. When I returned from our Thanksgiving recess, one of the letters on my desk was from Unimade. As you recall, Unimade is seen everywhere in Japan. It is known as Kawasaki over there. But the Unimade people were inviting this committee to come and visit with them in Connecticut where their headquarters is. I agree with you that intelligent use of robotics in our American industry to eliminate or replace those hazardous or repetitious jobs will be the salvation of not only just the Northeast but of all of our industrial malaise that we are now suffering.

But we are going to have to develop labor policies that work hand-in-glove with that. One of the things that I think both of us noticed that the Japanese were doing is that the Japanese worker was not opposed to robotics. He looked upon it as an increase in his standard of living rather than someone taking his job.

I hope that we can find some way to do that.

Mr. Bailey, do you have any questions?

Mr. BAILEY. Mr. Chairman, naturally I got here late and apologize for that and have to leave in exactly 5 minutes and will come back.

I have had a chance to glance through the testimony, however. I wonder if the chamber has a position on interest subsidization both here and abroad. We were asking some questions yesterday concerning financial packages as a trade barrier more or less and I don't think you necessarily referred to it here but if you have some material on it I would love to have your position.

Mr. SAMUELS. Mr. Bailey, if you are referring to the question of financing mechanisms in the development process, there is testimony dealing with that. If you would like me to, I will summarize it.

Mr. BAILEY. If you could be a little more detailed. I glanced over what you have here. It is very general. We had some people here yesterday talking about large-scale projects and the role of foreign governments in subsidizing exports and the financial package end. If you want to comment, I would love to hear your comment.

Mr. SAMUELS. Well, in the testimony I supported several mechanisms that relate to this. One is the trade development program which is funded under the foreign assistance bill and falls under AID.

I am not sure how the administration organizes it these days. That is one of the factors dealing with prefeasibility studies.

Mr. BAILEY. That is more reaction, though, to something that philosophically we don't support. Is that not correct?

Mr. SAMUELS. That is correct.

Mr. BAILEY. I am aware of that but I would like you, if you could, to supply to my office or to the committee more material on your view and suggestions on what can be done.

My personal view is that that is the major area that is going to continue to aggravate world trade problems and it is going to become the major area where there is going to be a real fight, trade fight, trade wars, and I just think that is where the focus is going to come because it is one of the most complicated barriers to remove.

Mr. SAMUELS. Mr. Bailey, we will be happy to provide it to you.

Mr. BAILEY. Thank you.

Chairman GIBBONS. Thank you, we appreciate it.

Mr. SAMUELS. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Robert McLellan, vice president of FMC, chairman of the NAM International Trade Policy Committee. We welcome this former Floridian.

STATEMENT OF ROBERT McLELLAN, VICE PRESIDENT, FMC CORP., AND CHAIRMAN, INTERNATIONAL TRADE POLICY COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. MCLELLAN. Good morning, Mr. Chairman.

As I mentioned, I am the vice president of FMC Corp., a diversified producer of machinery and chemicals with sales in 1980 of $3½ billion in the United States and 150 other countries around the world.

I am accompanied here at the table this morning by Lawrence Fox, vice president of NAM for international economic affairs. And, Mr. Chairman and gentlemen, with your permission, we have submitted for the record the complete NAM testimony. What I would like to do is to make some summary comments and make some personal observations about the U.S. trade problems, and the reasons why they exist and what might be done to solve them.

Chairman GIBBONS. Yes, sir; we will put your entire statement in the record at the end of your remarks.

Mr. MCLELLAN. The U.S. trade deficit is growing steadily worse for one main reason: The United States is no longer effectively competitive in world markets. Foreign competitors to U.S. firms have developed advantages in terms of cost, productivity, quality, and marketing. When combined with official government support for their exports, this gives them an important edge.

Frankly, many of the problems we face have been self-inflicted through a series of shortsighted policies. We in the United States have failed to encourage the investment, innovation, productivity, and other advances needed.

Furthermore, our policy of practicing free trade, even in the face of unfair trade practices from abroad, has its limits. We need to recognize that comparative advantage does not always work and that exceptions to the free trade, free market system are sometimes necessary in the short term if we are to accomplish long-term goals.

I call your attention to the article in this morning's Washington Post on page D9 entitled "U.S. Trade Officials Give Ultimatum to Japanese." In that article, Deputy U.S. Trade Representative David McDonald, who led the American negotiating team, is quoted as saying, and I quote, "Japan must make a decision, which we cannot make for it, whether to open its own market or to sacrifice some of its access to the U.S. market."

He went on and warned that economic relationships between the two countries had reached a "critical decision point."

I applaud Ambassador McDonald's statement. I strongly support the position that he has taken because it is up to us as a nation to assess the seriousness of a given problem, in this case the serious imbalance in our trade with Japan. It is up to us to deal with it.

Nor will it do us any good to try to cover up our poor trade performance by tampering with foreign exchange rates or by playing with trade numbers. As for exchange rates, Japan and Germany have proved that a strong currency need not be a liability. To those who say that we are not in bad shape since we did run a current account surplus in 1980, I hasten to point out that the current account is puffed up by such items as unremitted earnings from U.S. subsidiaries abroad, which obviously does nothing to improve the situation here on a current basis.

Some final reasons for the U.S. trade deficit included misguided legislative initiatives in trade incentive programs. In the former category are the Foreign Corrupt Practices Act and Arab boycott legislation which seek to right perceived wrongs at the expense of U.S. exports.

In the latter category we witnessed the proliferation of legislative restraints imposed upon the few worthy export programs which do exist such as DISC, the Export-Import Bank, and the Overseas Private Investment Corporation.

The solution to the U.S. export problems are not simple but I think some of the following ideas would help.

First, we must complete the job of revitalizing U.S. industry and restoring it to a competitive position in the world economy;

Second, we must establish workable rules and parity in trade relations with other countries; and

Third, we must preserve the free market domestically and internationally.

Specifically, the U.S. international trade policy that I am advocating would require a commitment to a series of actions which in many instances represent a substantial departure from the past.

Proper administration of this policy may eventually require the consolidation of a now scattered export activities of our Government into a Cabinet-level department of international trade and economic affairs. Without an effective, well coordinated administration, it will be extremely difficult to make a new U.S. international trade policy a reality.

We are encouraged by the policies of this administration. We think they are moving in the right direction. I applaud the efforts of Secretary Baldrige and Trade Representative Brock. I mentioned that this possibility of organization is something that we could eventually require and ask this committee to direct its attention to that possibility.

The actions necessary to implement a revised policy would include, first of all, a Presidential commitment to export expansion. The President should commit the U.S. Government to substantial export expansion with specific targets for export growth in relationship to gross national product, the defense burden that we carry, and our balance of payments.

Second, on export finance, the Eximbank should be removed from the unified Federal budget and given responsibility for the reimbursable credit program now administered by AID.

It should have authority to meet foreign competition in all areas of export credit. Incidentally, in my view, its name should be changed to the Export Bank of the United States to more accurately reflect its function.

Third, on taxation, deferral on fundamental export growth should be restored to the domestic sales corporation. This program should be extended to cover services and revised to make it more attractive to small firms.

Tax incentives should be provided to the export market development. Our goal should be parity with foreign competitors.

Fourth, this program would include the reduction of export disincentives. Existing laws and regulations controlling payments to foreign nationals and the Arab boycott must be reviewed and either eliminated or clarified so as to minimize their anticompetitive effect on U.S. exports.

International code should be negotiated in these areas so that U.S. firms can operate under the same rules as our foreign competitor.

Senator Chafee's bill, the Business Accounting and Foreign Trade Simplification Act, S. 708, represents significant progress on the payments issue, and we hope you and your colleagues in the House will follow the Senate's lead by approving it soon.

Fifth, a review of the antitrust laws is needed, including the Webb-Pomerene Act, as they relate to world marketplace, with an eye to promoting cooperation under appropriate circumstances by American firms abroad. Current uncertainty is deterring legitimate conduct.

Here, also, the Senate has taken a limited step in recently passing Senators Heinz and Danforth's bill, S. 734, and we urge the House to join in approving that measure.

Chairman **Gibbons**. May I interrupt at this point? There is a recorded vote going on and this one probably has some substance to it so I will go over and vote and we will return in just a moment.

Mr. **McLellan**. We will be right here when you return.

[Brief recess.]

Chairman **Gibbons**. Mr. McLellan, before you proceed, let me just make a comment here. You mentioned in your opening statement about many of our wounds being self-inflicted. We can't help but think that we have a propensity for doing that. This very important vote that I just attended over there was another self-inflicted wound. There is something about this Congress that seems to make us want to do things like that to ourselves. It is a complete waste of our time and your time. For that I apologize, and to all the other people in the room.

You may proceed, please, sir.

Mr. **McLellan**. Thank you, Mr. Chairman. No apology is necessary. We appreciate the chance to be here.

I was just down to my last comment, really. In closing, I would like to draw your attention to an emerging issue on industrial property rights. Adequate worldwide protection must be afforded U.S. industrial property rights; patents, that is.

In FMC Corp. we have seen several countries ignore the industrial property rights of U.S. companies, including our own. This situation has gotten worse over the last several years as the world becomes more competitive. It will be further aggravated if proposed revisions of the Paris Industrial Property Convention are made.

In view of this, I would suggest that the subcommittee review the proposed changes that came out of a recent Nairobi meeting of the Paris Convention, and review those proposed changes in the interest of giving consideration to the need for strengthening worldwide industrial property rights.

Mr. Chairman, that completes my summary, and I thank you very much.

[The prepared statement follows:]

STATEMENT OF ROBERT MCLELLAN, VICE PRESIDENT, FMC CORP., AND CHAIRMAN, INTERNATIONAL TRADE POLICY COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

THE TRADE POLICY CHALLENGE OF THE 1980'S

Mr. Chairman and members of the Trade Subcommittee, My name is Robert McLellan, I am Vice President of FMC Corporation, a diversified producer of machinery and chemicals with sales in 1980 of $3.5 billion. I appear today on behalf of the National Association of Manufacturers as Chairman of NAM's International Trade Policy Committee.

The NAM is a voluntary, non-profit organization of more than 12,000 companies, large and small, located in every state of the Union. It represents firms which account for about 80 percent of American manufactured goods output and approximately the same percentage of the nation's industrial jobs.

We regard these hearings on the conduct of U.S. trade policy as extremely important. The United States faces the prospect in 1982 of the largest trade deficit in its history. Some have projected the trade deficit at the end of next year will be running at an annual rate of as much as $72 billion. Even if that estimate proves exaggerated, as I expect it will, the reality is certain to be unpleasant. The first negative trade balance for this century, which occurred in 1971, set the tone for the decade. Our trade performance in the 1970s was lackluster at best, often discouraging and in some respects alarming. Only in one year out of 10 did we have a trade surplus, 1975. Under Secretary of Commerce Lionel Olmer noted in his testimony before this Subcommittee last month that the United States has suffered a cumulative trade deficit of more than $120 billion since 1975. And that does not include this year's projected deficit of $28 billion. This has happened despite the devaluation of the dollar in the 70s and despite efforts by both Democratic and Republican Administrations to mount export expansion programs.

Poor U.S. trade performance in the 1970's

In order to frame the right policies for the 1980s, to make U.S. industry more competitive, and to regain some of the ground the United States has lost in world markets, it is necessary to understand just how poorly we did in the 1970s relative to our strongest competitors, Japan and Germany. A few statistics illustrate the point. We lost the productivity race for the decade. Japan increased her annual output per man-hour by 4.7 percent from 1970 to 1979 and Germany by 5.4 percent in the same period. Average annual growth in U.S. productivity during the seventies, however, was only 2.2 percent. In 1970 Germany overtook the United States as the world's leading exporter of manufactured goods, and Japan is by far the foremost net exporter of manufactured goods. Japan's surplus in manufactured goods in 1980 was an astounding $93.7 billion. Comparable figures for Germany and the United States respectively are $63.1 billion and $18.8 billion. Significantly $18.8 billion represented a very good year for the United States—the second best in our history. But bear in mind that the United States is by far the biggest economy in the world. Should we be satisfied for Japan with less than half our workforce and Germany with about one-fourth our workforce to be so far ahead of us in these key indicators of industrial competitiveness?

Some will argue that so long as the current account is not in serious deficit there is no problem. To say the least, this view is simplistic and misleading. It overlooks the fact that in the final analysis American strength is industrial strength at home and the trade balance is the best measure of how our performance compares with that of other countries. Because Japan and Germany—countries far more dependent on foreign oil than the United States—have managed to pay their oil import bills, it makes no sense for us in the United States to argue that it cannot be done. It makes even less sense to suggest that our contribution to the world trading system should be to balance the OPEC world-wide surplus with American deficits.

Behind those deficits lie markets lost to Germany, Japan and others. We have lost industrial goods markets across the board: in capital goods, in high technology equipment, even civil aircraft, as well as steel, automobiles and consumer electronics. Put differently, America's world contribution and influence must flow from her economic and industrial strength. Neither we nor our trading partners will be well served if we permit further erosion in our industrial base—and mediocre export performance is a significant factor in that erosion. Just the opposite is true for Japan and Germany where superlative export growth has played a major role in enhancing their industrial performance.

Trade's contribution to U.S. economic growth

Before discussing what we as a country need to do now and in the longer term to improve the U.S. trade position, I should like to say a word about the impact of trade on our domestic economy. As is well known, both imports and exports have increased substantially in recent years as a percentage of GNP. Imports have grown more than exports and now account for 9 percent of U.S GNP. U.S exports which make up over 8 percent of our GNP, make an increasingly important contribution to our economic strength. One out of every six American workers is working for the export market, and those workers are among the better paid, making by definition competitive products. The export contribution to American well being, however, is not what it was and not what it could be.

If, for example, the United States had maintained in 1980 the share of world manufactured goods markerts we enjoyed in 1970 (21.3 percent as against 18.3 percent), it would have meant an extra $23.6 billion in our manufactured surplus for 1980 and an overall surplus that year of $3.3 billion. In other words, had we held onto our 1970 world market share, our 1980 exports would have paid for all our imports: oil, cars, steel, consumer goods, everything. Unfortunately, there is a tendency to discount the impact U.S. export expansion can have on domestic growth rates. After all what difference can $30 or $40 billion additional export sales make in a $3.5 trillion economy? The answer is a significant one. Our calculations show that if the U.S. export growth of 1980 had been maintained in 1981, it would have meant a full percentage point in the rate of growth in U.S. GNP. Our nation at this time is desperately searching for resumption of real economic growth. Exports could make a difference.

It is because we believe the country would benefit from a greater public awareness and appreciation of the benefits of increased U.S. exports we at NAM have urged successive administrations to develop an export goal for the United States. Our special responsibility, of course, is the manufacturing sector. At present the United States exports roughly 20 percent of its manufactured goods output. Calculations by the NAM staff suggest that increasing the percentage of manufactured goods output exported from 20 to 25 percent would add 1.2 percentage points a year to the nation's GNP growth rate. It is for that reason, the real benefit to domestic economy, that NAM believes an export goal makes sense for the manufacturing sector of the U.S. economy and for the economy as a whole. Such a goal, implies of course, an integrated set of policies designed to achieve that goal—including adequate export credit, elimination of export disincentives, and opening foreign markets more fully to our goods.

It is incumbent upon all of us, the Congress, the Administration, and those of us in the private sector to try to frame policies that effectively deal with the challenges we meet in international trade. These of course will be determined in large part by the way in which we define these challenges.

The National Association of Manufacturers has long been convinced that the strength of the domestic economy was the most important determinant of our international competitiveness. We have supported the President's economic program and put forward to this and the previous Administration a comprehensive program to revitalize American industry. We believe revitalization of American industry is essential if we are to retain our position as the world's leading economic power.

Additionally, it is imperative that we recognize the character of the international environment in which our trade takes place. Where possible, we should do what we can to ensure that the international trading system is as compatible with our own values and ways of doing business as is possible. Surely that was in large measure our aim in negotiating the MTN codes in the Tokyo Round, especially the codes on subsidies and government procurement. To the extent, however, that international realities are at odds with what we think they should be we must address them. We cannot assume that simply because we meet our obligations in the GATT and operate our affairs according to free market principles that foreign governments and other consumers in the international marketplace will favor American goods. Increasingly, foreign governments and government corporations are major purchasers of high technology systems and other industrial goods. Market principles are often less important for such purchasers than their own industrial policies.

Export finance

Ambassador Brock was clearly right to include export financing among the most important problems confronting United States exporters in international trade. In manufacturing, America's strength is primarily in the export of capital goods. As Under Secretary Olmer pointed out, the competitiveness of capital goods is especially dependent on export finance. There is more than a bit of unhappy irony in the observation that in the 1950s and early 1960s, when we barely needed it, our Export-Import Bank was probably the world's best export financing facility. In recent years the need for such a facility has grown dramatically both because nations such as those of the Common Market, Japan and other advanced countries have put so much of their own resources into export financing and because these same countries have developed capital goods industries that compete in head-to-head competition with our own. It is astounding to consider that in a few short years the European Airbus consortium, Airbus Industry, is now the world's second largest of civil aircraft producer, ahead of Douglas and Lockheed. The role of subsidized financing in this achievement should not be underestimated.

The Export Bank's most recent report to the Congress shows that in 1979 the major industrialized nations authorized $140.5 billion for export insurance, guarantees, and direct credits. U.S. authorizations accounted for only $9.5 billion, and supported only 5.2 percent of our exports. France, Japan and the United Kingdom each authorized over $30 billion in export financing for 1979 and supported thereby well over 30 percent of their exports. These conditions might be understandable and possibly acceptable if the explanation for them were that the United States by virtue of uniquely low commercial interest rates did not have to resort to official financing to compete internationally. We all know that is not the case.

These conditions, worrisome in themselves, have been made more so by the failure of the full governmental structure of the United States to appreciate the need to match the international competition in this vital area. The success in the OECD negotiations on export financing has been limited indeed, and in no way lessens the necessity of maintaining a strong Export-Import Bank. This view was recently expressed formally by the Executive Committee of NAM's Board of Directors. On December 3 they passed a resolution urging a comprehensive export credit policy. The resolution also calls for adequate Eximbank budget authority and other financing improvements including providing medium term export credit, which is now almost totally unavailable in the United States. It is readily available in other countries. A copy of the full resolution is submitted as an attachment to my statement.

The point to be stressed is that for an increasingly larger segment of American industry, the market is the world, not just the United States. For these industries it is not enough to make the kinds of investments that will enable them to produce more efficiently. They must also be able to sell what they produce. We cannot allow American competitiveness to be determined by foreign treasuries.

Despite a decade of efforts to enhance our export capability through one national export program after another, the U.S. still has, in relative terms, one of the weakest export promotion efforts of any major industrial country. I am troubled by press reports that OMB is proposing drastic reductions in the export promotion capability of the Department of Commerce, including the newly established Foreign Commercial Service.

Exchange rates

As I mentioned at the outset, it is all but certain that 1982 will be the worst year ever for the American balance of trade. Unquestionably such a development will force policy makers to react. In doing so it is vitally important that the country not repeat the mistakes of the past, neither the protectionism of the 1930s nor the more esoteric errors of recent history. In the 1970s the United States Government naively thought and acted as if our trade problems could be solved by the simple expedient of devaluing the dollar. So we devalued the dollar. That did not solve our trade problem, but it did make our inflation problem worse. In the same period America's chief competitors, Germany and Japan, enjoyed the twin advantages of appreciating currencies, which helped them control inflation, and sustained export expansions, which helped to bring about full employment in their societies. In short their strong currencies did not hurt them.

I am inclined to the view that the yen is not yet strong enough, that Japan has managed to protect the export advantage—lower export prices—of an undervalued currency despite her enormous strides in competitiveness.

Nevertheless the general lesson is clear: A strong currency need not be a liability. This is not to deny the possibility that at present the dollar may be overvalued. Probably it is. That however has little to do with trade. The Federal Reserve and the Administration have relied upon monetary policy and high interest rates as the principal weapon in the fight against inflation. Under such circumstances, the time may come when some intervention in foreign exchange markets is warranted. It remains the case, however, that to the extent that a strong dollar is the result of our competitive strength we have little to fear from it and no reason to tamper with it.

International agenda

A great deal remains to be done to help perfect the rule of law in world trade. The MTN agreements, important as they are, have scarcely begun to be implemented. This is particularly the case with regard to NTB codes of conduct of particular importance to American industry, such as the subsidies code, the government procurement code, the civil aviation code. Additionally, work begun in the MTN but not successfully completed must be addressed—notably a multilateral import safeguard system under GATT and a more rational approach to taxation under the GATT.

The GATT Ministerial is already beginning to dominate the international trade agenda for 1982. The first item of business for this major international meeting should be the negotiation of a new international safeguards code. It is now inescapably clear that GATT Article XIX, the existing safeguard clause, is not an effective instrument for containing emergency measures against imports within the bonds of international trade law. Our trading partners have effectively ignored it for some time for understandable reasons if not good ones, and now even the United States has felt compelled to handle an important import problem without reference to the GATT. Each year a greater portion of the world's commerce is affected by arrangements outside the scope of the basic international law of trade. The result can only be a diminution of the importance of the GATT and the willingness of trading countries to regard its injunctions as binding upon them.

A new safeguards code is important for several good, practical reasons. Restrictions imposed by one country invariably affect commerce in others as well as the producers who are the targets of the restrictions. The trading system as a whole is entitled to know when markets are interfered with and new trade patterns forged by fiat. Moreover any formal code that nations feel obliged to honour can be relied upon to interject into national decisions welcome self-restraint in the exercise of the safeguards option. These are some of the important reasons for attempting to achieve such a code. The critical one is that failure to get a new safeguards code will ultimately undermine the GATT system itself—a process which unfortunately is already too far advanced.

Comparative advantage is the underlying principle of free market economies and the GATT world trading system. We believe in the concept of comparative advantage, but we must remember that comparative advantage doesn't work in the face of non-tariff barriers to imports and subsidization of exports.

National taxation policies under GATT

The trade ministers who meet in Geneva next year should also institute a review of the treatment of national taxation policies under the General Agreement on Tariffs and Trade. I understand that the Subcommittee will be hearing from a panel on the DISC at a later session. I will not go into DISC itself in any detail here, but I would like the Subcommittee to know that both the Taxation Committee and the International Trade Policy Committee of the NAM have approved a resolution on DISC. It urges a vigorous defense of the DISC internationally and expresses the belief that under no circumstances should the DISC be abandoned without providing somewhere in the tax code equivalent benefits to U.S. exporters of all sizes.

As the Subcommittee knows, both the need for DISC and the difficulty it has encountered in the GATT stem in part from the fact that the GATT itself is fundamentally in error in its presumption that the remission of indirect taxes, like VAT, is not trade distorting whereas the remission of direct taxes, e.g. taxes on profits, is.

This may be so in trade between two countries with valued added tax systems. It is certainly not the case in trade between a VAT country and a country like the United States that has no means of relieving the foreign buyer of the tax implicit in the price of any good. The consequential trade disadvantage to the United States, which relies on direct taxes more than any other industrialized country, is of major importance.

Performance requirements

It is also very important that the world's trade ministers take a look at the trade distorting conditions being placed on investments throughout the world. In their most pernicious form, these conditions, known as performance requirements, make foreign investment contingent upon local sourcing or upon the export of products which otherwise would be consumed in the host country. Many performance requirements are in violation of existing GATT rules. That point is well made by the pamphlet on performance requirements published by the Labor-Industry Coalition for International Trade in March 1981. The pamphlet also makes clear how widespread these practices are, that, for example, the figure prominently in the policies of twenty-five important trading nations. The subject of performance requirements has been introduced by the United States in the GATT as well as in the OECD.

Unfortunately, despite the evidence against performance requirements, we face a challenge in persuasion of the first order. Japanese success and the desire to imitate it have become strong forces behind the trade and investment policies of many countries. As the Subcommittee well knows, Japan has restricted and burdened foreign investment far more than Europe, which by and large kept its distorting policies to incentives. Now, however, Japan has imitators in Europe and elsewhere to the extent that we see a host of performance requirements even in Belgium.

I will not comment extensively today on the U.S.-Japan relationship, or on the role of Japan in the international trading system. I would, however, like to encourage both the Subcommittee and the Administration to go forward in the work they have begun regarding Japan's trade and industrial policies. It is important that the Congress and the Administration continue to remind the Japanese government and business leaders that the survival of an open world trading system is largely contingent upon Japan's willingness to play by the rules.

Export trading companies

On the legislative front, I congratulate both the Administration and the Congress for much needed reform in our tax laws relating to the taxation of Americans abroad and for achieving important reforms in the statute governing the operation of the Overseas Private Investment Corporation. The potential—unmeasurable but clearly large—of the Export Trading Company legislation now before the Congress makes it if anything an even more important piece of legislation than those I have referred to.

The absolute bar between banking and commerce that exists in the United States is unique in the industrialized world. Because of it, our smaller companies do not have the kind of access to the expertise on foreign markets and the financing possibilities which are readily available to their competitors in other countries. The Export Trading Company Act, which passed the Senate earlier this year by a vote of 93 to nothing, goes to the heart of this problem by authorizing banks to participate in the ownership of export trading companies. At the same time, the bill possesses sufficient safeguards to ensure that these new powers will not be abused.

The other major provision of this legislation, as you well know, would enable export trading companies to get definitive advice from the Commerce Department respecting the legality of proposed export plans under U.S. antitrust laws.

The problem now is that even the best lawyers cannot give their business clients confident assurance that one or another worthwhile foreign venture would not violate the antitrust laws. Under the ETC bill the Commerce Department could do that.

America needs exports. It needs to have its companies work together creatively to foster exports. When conduct is not only innocent but desirable, the individuals involved should not be asked to shoulder a burden of doubt respecting its legality. NAM strongly supports this legislation and strongly urges the Congress to act favorably on it.

The Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act presents problems in that it, like our antitrust laws, it has barred conduct which was not the target of the legislation. We do not quarrel with the basic purpose of the Act. We are, of course, opposed to the use of bribery of foreign officials and similar practices to secure business. However, the ambiguity of the law and its application to countries whose legal and commercial systems are very different from our own has made the Foreign Corrupt Practices Act a major export disincentive. It is our opinion that American companies have foregone legitimate business opportunities overseas because of uncertainties about this statute. At a time when we are trying to expand our exports, to lose legitimate business deals because of ambiguities in U.S. law is both unwise and unnecessary.

The Senate has just passed appropriate amendments to the Foreign Corrupt Practices Act and we hope we the House will act promptly along similar lines.

Other issues

I regret that time is insufficient to permit me to comment on East-West trade issues. However, I regard the steps the Administration has taken to advance the normalization of trade relations with China as very important. Also, I believe the United States should get on with the business of normalizing trade relations with the U.S.S.R., although I recognize that this is a most complex field, which requires reciprocity on the part of the U.S.S.R. and calculated decisions regarding linkage with major security and foreign policy objectives.

Another emerging issue of growing trade importance to which I would like to call the Subcommittee's attention is the protection of industrial property rights. Currently, the world's trading nations are negotiating possible revisions of the Paris Convention on Industrial Property, the basic international treaty governing the treatment of industrial property. In these negotiations, the developing countries are pressing for and may receive the right to decide for themselves and without reference to the owner of a patent whether or not a company has "worked" its patent in their countries. They further propose that they should be entitled to authorize someone of their own choosing to work the patent if they determine that the patent holder himself has not done so. To say the least, it would be inconsistent for us to plough huge sums into research and development only to permit the expropriation of the fruit of that research through the kind of international understanding on industrial property that the LDCs are pressing for.

At FMC we have seen countries like Hungary ignore the valid industrial property rights of U.S. companies. This situation, which has grown worse over the years, will be further aggravated if the LDC view on compulsory licensing prevails in the negotiations on revisions of the Paris Convention.

Conclusions

I would like to conclude my statement by emphasizing once again the role that improved trade performance can play in revitalizing the American economy. Our industrial base has been allowed unnecessarily to be eroded by reason of insufficient investment and consequent inadequate growth in productivity. With the enactment of the Administration's economic recovery plan, new investment in American industry will take place and bring about greatly increased American competitiveness. In making that investment, we must remember that just as we are the world's market so also it must be ours.

Further, we must constantly bear in mind that the world does not fully share our economic values. Many of the products that enter our markets and with which we compete in third countries derive their competitiveness from direct and indirect foreign governmental support. Our own policies must be responsive to this reality.

RESOLUTION OF THE EXECUTIVE COMMITTEE [1]

Whereas, U.S. exports now account for roughly 20 percent of U.S. goods output, and further expansion of U.S. exports can add materially to the health of U.S. industry and to the creation of new jobs in the economy; and

Whereas, the Export-Import Bank has served and can continue to serve a vital role in assisting U.S. exporters to develop and expand overseas markets for U.S. manufactured goods;

Resolved that the United States Government should develop a comprehensive export financing strategy which recognizes the needs of U.S. exporters for competitive financing and carries out more effectively the Export-Import Bank's statutory mandate to help provide such competitive export credits. This strategy should entail:

providing the Bank with necessary budget authority and developing practices which adequately recognize the very limited impact of the Bank on the Federal Budget; and

improving financial cover, as well as the other parameters of financing packages, offered by the Bank in support of export projects in industrial sectors whose exports are particularly dependent on long-term fixed rate direct credits; and developing new financial instruments which meet the changing needs of U.S. exporters in various industrial sectors and for various types of credits, as for example, the proposed International Equipment Trust as a way to finance commercial jet aircraft at market rates and market terms; and

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[1] Resolution passed by the Executive Committee on the Board of Directors of the National Association of Manufacturers on December 3, 1981.

mobilizing longer-term private capital so as to help assure that internationally competitive export credit is more readily available to U.S. exporters regardless of size; and

providing commercially competitive medium-term export credit which now is almost totally unavailable in the U.S. in contrast with foreign countries;

Further resolved that the U.S. government continue to seek as a matter of long-range policy the elimination of export credit subsidies through international negotiation and agreement. To help achieve this objective, the Export-Import Bank should be authorized to counter extraordinary financing practices of other countries.

RESOLUTION

Whereas export competitiveness is vital to improved U.S. economic performance, and U.S. tax laws specifically provide for Domestic International Sales Corporations (DISCs) to help partially offset the tax and non-tax advantages enjoyed in other countries with systems significantly different from our own; and

Whereas the DISC provisions may be in jeopardy under the rules and procedures of the General Agreement on Tariffs and Trade (GATT) while foreign export advantages continue to enjoy GATT sanction;

Resolved, that the U.S. Government should vigorously defend the DISC in the GATT, and that the Administration should adhere to its public commitment to maintain the DISC either indefinitely or until such time as Congress enacts legislation, acceptable to businesses of all sizes, providing or at least substantially equivalent tax benefits for U.S. exports.

RESOLUTION—THE EXPORT TRADING COMPANY ACT

Whereas the need to improve the international trade position of the United States is clearly demonstrated by the serious trade deficits of the last five years and the prospect of an unprecedentedly large trade deficit in 1982;

Whereas the number of American corporations involved in exporting is relatively small, with many potentially successful exporters choosing to forego foreign markets due to uncertainties respecting the operation of U.S. antitrust laws and other legal impediments and burdens which add to the cost of exporting; and

Whereas two administrations have supported and the Senate has twice unanimously endorsed legislation to remove some of these impediments and to foster the growth of export trading companies in the United States, legislation now embodied in Senate bill S. 734, in House bills H.R. 1799, H.R. 1648 and in other bills;

Resolved that the responsible committees of the House of Representatives should act quickly to discharge their responsbilities respecting the export trading company legislation and the Congress of the United States should approve and forward the Export Trading Company Act to the President without delay.

Chairman Gibbons. Thank you, sir. I particularly appreciate your calling our attention to this matter in industrial property rights. I know it has been of some concern to you, but we should take a look at what is being put together on an international basis in this matter.

I also want to commend you, too, for some innovative ideas about what can be done and what should be done.

Let me ask you the same question I asked another of the witnesses awhile ago: What do you think about proposals in the United States to impose U.S. content requirements upon imports?

Mr. McLellan. Well, we believe in the full measure of a private enterprise system that permits a manufacturer to put his product together in the most efficient and most effective manner, and we certainly believe in the proposition of fair national treatment.

We are, as a matter of principal, opposed to local content requirements. We live with them in doing our business in foreign countries in many cases, and I can assure you that in our experience it is not an efficient method for industrial activity.

Chairman **GIBBONS**. Is it your opinion that it just increases the cost of the product in the local market?

Mr. **McLELLAN**. Yes, sir, it does.

Chairman **GIBBONS**. Mr. Frenzel?

Mr. **FRENZEL**. Thank you, Mr. Chairman. I want to thank the witness for his testimony also, although much of it I did not hear. I did have a chance to look it over. I note with great interest your section on national taxation policies under GATT. One of our members here, Mr. Conable, has long held that we are in great need of an International Tax Conference to create some sort of harmony out of the discord, so that we would be somewhat competitive and I think your statements on this are directed toward that end, too.

Maybe that is a good project for the GATT Ministerial meeting a year from now. But I think you have given us some valuable testimony.

Do you want to comment on it any further than you did in your statement?

Mr. **McLELLAN**. Thank you, Mr. Frenzel. I think there probably isn't much to add to that. Just to emphasize that we would indeed endorse that. We did refer to that in our NAM statement, as you know. I certainly agree with you in terms of my personal practical experience, that there is indeed a need for an International Tax Conference.

Mr. **FRENZEL**. Thank you very much.

Chairman **GIBBONS**. Let me ask you a question. The National Association of Manufacturers has got a group and the chamber of commerce has got a group, and I realize there is some interlocking or overlapping in all of these arrangements. I am not criticizing because I know that many times some of your objectives are divergent. But it seems to me that we need to pull together America on an international trade policy, particularly we could probably all unite on an export policy without much difference of opinion.

Have you all ever explored the possibility of all of us working together to try to get a good export policy going for America?

Mr. **McLELLAN**. Yes, Mr. Chairman. In fact, quite a bit of that does take place today. There is a great deal of communication among the leading national trade organizations on this matter of export policy. And, as you point out, there may be some divergence in these large organizations on viewpoint but it really is not significant. We all come out at about the same place on what we consider to be the shortcomings of effective national export policy. I don't think you would find serious differences between the principal organizations.

We do have a variety of organizations in Washington and throughout the country that do act as a common denominator on this matter of export policy. There is an export council that operates here in Washington, D.C., and it cuts across the various organizations. There are a number of trade clubs, as you know, throughout the country, and they tend to be common denominators on the international trade matters.

In my experience, particularly when I was Assistant Secretary of Commerce addressing the various institutions, there were really very minor differences among the various organizations and you could, indeed, if you wanted to ask these organizations to put together an ad hoc coalition, come up with a common position on export policy that I am sure they would all endorse.

Chairman GIBBONS. Well, we somehow need to get the message to all Government leaders and to the American business leaders that we do have a common policy, and we can unite on common goals. Because I think if there is one thread that finds itself consistently displayed in this group of hearings that we have had so far, it is that there is a common set of understandings about export policy, but we are very slow in implementing them. I think that we sometimes get our confusion over import policy mixed up with our rhetoric on export policy. I am not advocating the formation of another trade association, but certainly it looks like perhaps some kind of ad hoc arrangement as mentioned there, could come together.

For instance, in the House of Representatives we are not getting the export trading company legislation enacted. There just simply has not been enough congressional understanding of the need for it. The same with change in the laws dealing with so-called foreign corrupt practices. All of these things are languishing because we haven't yet developed a push to get it done.

As you can see, I am sort of exploring around as to what more can be done. I would like to explore that with you further and the National Association of Manufacturers and all these other groups of witnesses that have appeared because I think that there is one thing that probably we as Americans can agree on, and that would be export policy.

We may not be able to agree on import policy, but I think we can agree on export policy.

Mr. MCLELLAN. I appreciate those remarks very much. I think we can agree on an export policy and most of the elements of a positive export policy really do not need to impinge upon the views of the importers really. Perhaps in some areas but not all that seriously.

I agree with you that we can agree on the essential elements of a positive export policy.

Chairman GIBBONS. I would think that especially our friends in organized labor who already have an interest in exports would have a deep interest in cooperating and trying to promote a better U.S. export policy, because with the problems we have with export licensing and export financing, we are just not hitting the ball.

Mr. MCLELLAN. No; we need to enlist more of the groups. We have found in our company that we have always had very strong support of the rank and file, the local union presidents in our factories throughout the country. The leadership of organized labor for a period, as you know, was in opposition to some of these export support programs like the Eximbank as a function of their objection to foreign investment. It just kind of got wrapped up in their objection to foreign investment. They wrapped up investment and some of these export support ideas together and came out against both.

But when you met individually with union leaders, they understand. I did on one occasion with Mr. Able, for example, and discussed this in some detail with him. He was quick to point out that labor really should be supporting us on the export support mechanisms that we were advocating at that time, and continue to advocate now.

I think the opportunity exists to get organized labor on board on supporting these export programs that can be done. I would say that this is something we would like very much to review in NAM, your ideas for more effective, better coordinated work among the several associations, and to explore this with the other associations that I know would welcome the opportunity to participate in that kind of a coalition.

Chairman GIBBONS. I never can speak for the whole committee, and I wouldn't attempt to. But I certainly would be glad to lend whatever help I could give in that matter, and I think you would find a lot of volunteers around the Congress on that.

Mr. MCLELLAN. Let's see if we can make some headway on that. That is very good.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. A previous witness, Mr. Morgan, indicated that he had experienced continuing difficulty with the licensing control program. Do you have any comments on that?

Mr. MCLELLAN. From FMC's point of view we have not had any serious problems. Occasionally we seem to encounter longer delays than we think is necessary, but that is a matter of opinion. I know. Looking at it from the other side, when I was serving as Assistant Secretary of Commerce I was criticized a lot of times for delaying in issuing licenses because perhaps it took us a little longer to do our homework than it should have. I think we have made good progress in that area. There is always a need to do a little better job.

At the moment I suspect that there is a little more confusion between total foreign policy and the licensing specifics, a little more gap in there between Commerce and the White House than there should be. We would hope that the administration might tighten up a little bit on that and let the Commerce Department act a little more promptly.

Mr. FRENZEL. Thank you very much.

Chairman GIBBONS. Thank you, sir.

Mr. MCLELLAN. Thank you very much.

Chairman GIBBONS. Our next witness is Mr. Timothy W. Stanley, president of the International Economic Policy Association.

Mr. Stanley, we are glad to have you with us today and you may proceed.

STATEMENT OF TIMOTHY W. STANLEY, PRESIDENT, INTERNATIONAL ECONOMIC POLICY ASSOCIATION

Mr. STANLEY. Thank you very much, Mr. Chairman. It is a pleasure to be here.

The complex subject which your subcommittee is addressing is very hard to encompass in a few pages or words, so I have submitted a more detailed written statement, and with your permission will summarize it here very briefly.

Chairman GIBBONS. Your more detailed statement will appear in the record at the end of your oral statement.

Mr. STANLEY. The International Economic Policy Association is a nonprofit research group which has been studying international economic issues for almost 25 years. I have drawn on that work, including the expertise of the select group of American companies which are members of the association, but without purporting to represent the official view of any particular member company.

As you are well aware, Mr. Chairman, the subject of trade is broader than merely the export and import of goods. It includes trade in services, international investment and financial flows, taxation of foreign-source income, and commodity agreements, among other issues. We are really talking, then, about America's economic interactions with the rest of the world and its long-range viability as a major industrial power, one which many other countries count on for their security.

You know it, Mr. Chairman, but the public in this country does not seem aware that the total of these interactions has really doubled as a percentage of GNP in the last decade or so, and it now exceeds a quarter of our national product if you count both export and imports and services. I don't think our public realization has yet caught up with the fact that America is no longer the exception to the rule that trade is vitally important, as we were for so much of our history.

All of these interactions take place against the background of a world economy that is in trouble. There are many factors at work, of course; but the dominant ones, in my opinion, are the two oil shocks administered by OPEC which set most of the world economies on a course of stagflation, payments imbalances, and unacceptable unemployment. The eighties, then, are likely to be a decade of many uncertainties working to destabilize investment, distort trade, unsettle exchange rates, affect security relationships and impact on our citizens' domestic well-being. My written statement deals with four of these uncertainties and instabilities in some detail, namely trade—both goods and services—investment, exchange rates, and above all, energy.

I believe, Mr. Chairman, that the United States can no longer afford to be the only major industrial nation without a coherent set of foreign economic policies to guide us during this difficult decade ahead. We are still not convinced that our Government has organized itself, despite having some very good people in key positions, to deal adequately with the totality of foreign economic policy, which is too often treated either as a handmaiden of domestic economics—and politics—or of foreign and security policies. We would like to see a revived Council on International Economic Policy, chaired by a key adviser in the White House, such as the U.S. Trade Representative, coordinating the activities of all the departments and agencies with roles to play in this large field and empowered to develop a strategic overview for the administration, rather than dealing piecemeal with detailed issues as they arise.

In the kind of world we envisage, every country, including the United States, has a heightened imperative to export. This raises the question of who is to absorb these exports in a climate of growing protectionism. In a recent survey of Europe, we found that the answer was most often the United States, especially because high interest rates have made the dollar overvalued against the currencies of our major trading partners.

The United States has traditionally sought and maintained an open, free market system for trade and capital movements. The Tokyo round represented real progress, in theory at least, in reducing nontariff barriers. But in practice, we live in a highly imperfect world in which some governments follow a mercantilist approach in deliberately seeking to distort trade and investment decisions and manipulate exchange rates.

This poses a policy dilemma for the United States which we have not really faced: Do we "go and do likewise," and thereby abandon long-held political and economic principles? Or can we sustain our preferred open market approach in the face of these pervasive imperfections? My answer to that dilemma is that we can and must sustain the principles of maximizing economic efficiency via freedom of economic choice; but that we must more realistically come to grips with the world as it is and develop more adequate and swifter responses to violations of GATT rules or such generally accepted principles as reciprocity and nondiscriminatory treatment. Under Secretary Olmer's December 1 testimony before the Senate Finance Committee stressed the serious problems we have with Japan. He indicated that our problem with the Japanese market is not United States competitiveness but rather results from "a profound inequality in our access to the Japanese economy." This is the type of hindrance we must eliminate.

We have already had some discussion this morning about the Japanese problem, which is a very serious one in my view, so I won't add to it here.

My statement argues that in several areas, the best defense may be a good offense. For example, despite the arguments that below-market export financing really amounts to subsidizing foreign consumers, we cannot work toward reduction and eventual elimination of export financing subsidies on a unilateral basis by severely curtailing the Eximbank's authority and funding. Nor can we afford to treat taxation of foreign-source income as purely a tax administration or revenue raising matter. Again, we need to look to the effects on America's international competitiveness. The same approach is needed in antitrust matters.

I cannot fault the general thrust of the testimony which administration witnesses have presented before this committee and elsewhere. The rhetoric is good regarding a more aggressive pursuit of fair trade and reciprocity in the context of maintaining an open trading system. But in many cases, the tools to put such declaratory policies into effect are lacking. The administration has cut the Eximbank's funding to a level that many people feel is simply below competitive viability. The administration is not prepared to encourage the search for alternatives to DISC now that GATT has finally ruled against it, although it is apparently willing to fight individual injury complaints on a case-by-case basis. It has effectively abandoned trade adjustment assistance programs—which are even more needed to avoid protectionism, especially if they can be targeted so as to really adjust rather than protect inefficiency. Even Commerce's new Foreign Commercial Service, which is just getting its feet on the ground and as I understand it, is doing a good job, is reported to be a target for Mr. Stockman's ax. Congress is considering reform of the Foreign Corrupt Practices Act and trading company legislation, but there are still antitrust and other objections heard from various administration sources. In short, the administration may, for budgetary and other reasons, be denying itself the tools needed to carry out the very policies it advocates.

With respect to investment, we are finding an increasing proliferation of trade-distorting performance requirements which really amount to import restrictions and export subsidies. Where these cannot be dealt with under GATT rules, or under section 301 of the Trade Act, perhaps it is time to consider denying GSP or other special tariff rates to products entering the United States as a result of such requirements.

Trade and investment cannot be separated as different issues, which means that we should try to achieve greater reciprocity in the treatment of our investors abroad, for example, by authorizing U.S. Government regulatory agencies to consider reciprocity questions in granting licenses and approvals to foreign firms. I, at least, although this is not yet an official position of my organization, think it is time for regulatory agencies when they deal on licenses to at least be empowered to consider whether the applicant's country grants any reasonable form of reciprocity to the United States. I don't think you can do this on a blanket across-the-board basis.

There is a lot to deal with selectively, specific cases in specific countries which are particularly troublesome in that regard. Japan has been mentioned this morning as has Canada. I would add Mexico in terms of performance requirements, and France in the case of nonreciprocity. The administration is attempting to deal with these, but I am not sure that they have the tools that they need. The goal should not be retaliation for its own sake, but rather tools to move us all forward to where we would like to be to a less imperfect, open trade and investment system.

Service industries are of growing importance in our international economic relations. Yet, although they are subject to many forms of discrimination and foreign subsidy, we generally deny them access to the same countervailing and antidumping remedies afforded to traders in goods. Congress should consider changing this.

With respect to international monetary policy, we have found that free-floating exchange rates, which should be self-equilibrating in theory, do not always work that way in practice. A benign neglect approach to the value of the dollar will not solve our economic problems, whether the dollar is, as now, artificially high, as against the yen for example, or is depreciating as it did during much of the past decade and probably will next year. While we cannot prevent basic movements in currency values, a more active and coordinated intervention policy could moderate the intensity of change and the resulting instabilities.

Finally, I see energy as a continuing challenge. I am disturbed that the administration and the American people seem to have prematurely relaxed on the theory that market forces will stabilize energy costs. One single country, Saudi Arabia, could singlehandedly dry up the glut which it has helped to create. It is not the time to abandon our efforts to further erode OPEC's hold over the world energy market and hence indirectly over the world economy.

In conclusion, Mr. Chairman, I believe that if we can persevere in our commitment to open trade and investment policies, enhance our productivity, capital formation, and R. & D. here at home, seek greater stability in exchange markets and press forward on energy, we can achieve a return to patterns of sustained real growth, reduced inflation and unemployment. If we fail to do that, then the outlook is for continued stagnation and growing protectionism everywhere. But to persevere in today's climate may be impossible if other countries are perceived to be playing the game unfairly.

So I believe the administration needs to be more aggressive in insisting on fair trade and reciprocal treatment and maintaining the tools of a competitive foreign economic policy, which it is cutting for budgetary and other reasons; but most of all, as you were saying in your dialogue with the last witness, I think the public perception of the importance of exports and foreign economic policy needs improvement. We have got to raise our level of attention to and understanding of global economic issues. We have to better organize our national response and we must take a longer term and more strategic approach to them. Your committee's oversight hearings, I think, are a very important contribution to this process.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Statement of Timothy W. Stanley, President International Economic Policy Association

Mr. Chairman: I appreciate the opportunity to present the Association's views on U.S. trade policy. With your permission, I shall summarize them in the few minutes available for these hearings and request that the full statement be included in the record.

INTRODUCTION

The International Economic Policy Association has been involved in international economic issues for almost 25 years. We have long felt that America needs a coherent and long-term strategy for dealing with the complex interrelated economic issues of the world.

As you know, IEPA is a nonprofit research group which is supported by a select group of leading American companies with international interests and experience whose expertise we draw upon in our work. The views I express, however, do not necessarily represent the official views of any particular member company but they do reflect the substantial work which we have done over many years in these fields. This is represented, for example, by the Association's three books on the U.S. balance of payments, and various other studies including our current book in progress on "American Foreign Economic Strategy for the Eighties." A summary report on this work was released in March of this year and copies have been made available to the Subcommittee staff.

As evidenced by the testimony you have already heard from previous witnesses, the trade issues included in your oversight hearings cover a wide span. They range from exports and imports to international investment and taxation, commodity agreements, and service industry problems. These and many more issues are a seamless web that comprise America's international accounts—and its long-range viability as an industrial power. You already know that international trade, i.e., both exports and imports equal one-quarter of the value of our GNP, an interaction that is even larger when investments are included. You also understand that international transactions affect many parts of the U.S. domestic economy and are a vital link in our own economic well-being. For example, one-quarter of farm income depends upon the international market, and 40 percent of our cropland is in production for export. With the number of U.S. manufacturing workers dependent upon exports at a level of 5.1 million in 1980, and with employment in the export sector growing at four times the rate of other domestic employment, we have now arrived at the stage where the vitality of our export sector is critical to the U.S.

economy—catching up at last to most of the world's developed economies which are even more dependent on trade.

THE WORLD ECONOMY IN THE EIGHTIES

The 1980's seem to be characterized as a decade of international uncertainties. These uncertainties are working to destabilize investment, distort trade, modify our defense relationships, and affect our citizens' domestic well-being. But the U.S. Government still has no coherent or concerted policy for dealing with them.

The fact is that the United States has not been earning its way in the world, and has sold assets (or created claims on future production) for a cheap price, as the dollar depreciated over the last decade.

Until very recently, high U.S. interest rates led to an artificially high dollar, temporarily reversing the secular trend, at considerable costs both to us and to our trading partners, at least in terms of their oil imports, which are priced in dollars, but with offsetting trade advantages. Governments around the world are now beset by social tensions rising from an extended period of stagflation which can be traced almost directly to the effect of the successful cartelization of world oil in 1973 by OPEC. In fact, comparing the five-year periods before and after 1973, one finds that the major industrial countries had their real growth cut in half and their inflation rates doubled.[1]

For the United States, our terms of trade deteriorated by 34 percentage points between 1969 and 1980, with almost one-third of the decline occurring during the high inflation, dollar-floating period up to 1973, and another 40 percent of the loss occurring in one year—1974—because of OPEC actions.[2] Nearly all of the remainder occurred in 1979, again because of OPEC's actions.

Since 1973, governments everywhere have followed varying policies to try to cope with the recurrent financial shocks stemming from the steady rise of the cost of energy. The financial drain has been so severe and the margins of growth so narrow that Western governments have not been able to afford, either in economic or social terms, the costs associated with maintaining and improving a credible and secure defense posture. So the trade issues that your Subcommittee is discussing transcend goods and services and narrow economic questions, and also involve the defense and security issues being discussed in other committees of Congress, just as they intrude into our "domestic tranquility."

This fundamental shift in the world economy has still not been fully digested in economic terms; and the only escape for the trading world seems to be a heightened imperative to export which has brought on domestic pressures in many countries for protectionist policies.

A colleague and I conducted one of IEPA's periodic economic surveys of Europe last summer and found a pervasive politico-economic malaise centering around unacceptable levels of unemployment in all of the major countries. Yet, their hopes to break out of the slump centered on an export-led boom. Who is to absorb these exports? In many cases the answer was the United States, where the market was considered more attractive because of the overvalued dollar in relation to the currencies of our major trading partners. These nations were very much aware of what international trade meant for them, traditionally a very large portion of their gross national product—in some cases higher than 50 percent. International competition is important to these nations for its job production and foreign exchange earnings. Yet, for the United States, notwithstanding the rapid growth in the importance of our international economic relationships, foreign trade and investment policy has often been treated as a handmaiden of domestic economics (and politics) and as a secondary adjunct to foreign policy. The thrust of my contribution to your hearings, Mr. Chairman, is to impress upon this committee that these relationships now have an importance to almost every sector of the American economy and warrant priority treatment in their own right.

We can no longer afford to be the only major industrial nation without a coherent foreign economic policy to guide it in the highly competitive world of the future. Our policies have generally been consistent in rhetoric but highly uneven in performance and intensity. While we believe in the free market system and in fair trade, and advocate open markets for goods, services, and capital, we must recognize that we, in fact, live in a highly imperfect world in which some governments deliberately seek to distort trade and investment decisions and manipulate exchange rates, while others try to follow a mercantilist approach to their own advantage.

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[1] For details see, "American Foreign Economic Strategy for the Eighties," International Economic Policy Association (Washington, 1981), pp. 18–19.

[2] Survey of Current Business, U.S. Department of Commerce, May 1981, p. 17.

Since the Trade Expansion Act of 1962 and the Kennedy Round trade negotiations, we have reduced direct tariff levels so that, for the most part, they no longer play a significant role in obstructing the flow of goods across international boundaries. However, we still have nontariff barrier-type problems in goods trade, and also in trade in services and in investments. Although the Tokyo Round negotiations, which were sanctioned by the Congress through the passage of the Trade Agreements Act of 1979, squarely addressed some of these barriers in goods trade, much more needs to be done on surveillance and execution. (One issue which was not adequately dealt with is the need for a revitalized international "safeguards" code.)

The net outcome poses a policy dilemma for the United States which we really have not faced. Do we "go and do likewise"—and abandon long-held political and economic principles? Or can we sustain our preferred open-market approach in the face of such imperfections as tariff and nontariff barriers, subsidies, performance requirements, nonreciprocity and the like?

My recommendation is that we should sustain the principles of maximizing economic efficiency via freedom of economic choice; but that we must more realistically come to grips with the world as it is and develop more adequate and swifter responses to violations of either GATT rules or generally accepted principles, such as nondiscriminatory, most-favored-nation treatment.

The best defense to rising protectionism may be an effective offense. We must enhance our productivity, capital formation and R&D here at home. We should not eliminate DISC without some substitute which provides tax treatment of export earnings comparable to that which the Europeans provide. We should enact the Trading Company legislation to enable us to compete with the Japanese and others; and we should reestablish domestic trade adjustment assistance programs targeted at real adjustment rather than subsidy of inefficiency. With regard to the new gentlemen's agreement on export financing, while this is a step in the right direction, a unilateral action by the United States that severely reduces funding available to the Export-Import Bank merely leaves U.S. trade exposed to unfair competition.

Secondly, I believe that we must approach the international economic arena with more integrated policies in which, for example, our tax policy is treated not just as a matter of revenue raising or tax administration, but in a broader international competitive context. Services are coming to be recognized as an integral part of international trade—and indeed they are its most rapidly growing component; and investment is increasingly perceived as a potential benefit for both host and home countries and as an important determinant of trading patterns, especially where performance requirements are imposed.

However, I am still not convinced that our government has organized itself, despite some very good people in key positions, to deal adequately with the imperfect and often confused world in which we find ourselves. For example, we would like to see a revived Council on International Economic Policy, chaired by a key advisor in the White House, such as the U.S. Trade Representative, coordinating the activities of the numerous departments and agencies which have roles to play in this vast field. Such coordination and risk management should also encompass our growing vulnerability to disruptions in overseas raw materials supply; and it should involve a review of the U.S. international monetary policies which need to be more carefully weighed by policymakers—and in less ideological terms. We cannot afford to continue a "benign neglect" philosophy on the international value of the dollar, whether it declines, as under Carter, or whether it rises, as under Reagan's—and the Fed's—interest rates.

It took us three years and a domestic and international crisis in October of 1979 to realize that, whatever the theoretical merits of a free-floating dollar, the real world just doesn't work that way. You will be hearing, Mr. Chairman, in a later session from an esteemed colleague, Dr. C. Fred Bergsten, with whom we used to argue this point when he was in the Carter Administration. But he now fears, as we do, another dollar crisis sometime next year. I hope you will ask him about his "conversion," and what may thereby be implied for the learning curve of this Administration.

Since this decade will be one of multiple instabilities, we must address the ones which will have the severest impact on the world trading system. These include trade (both goods and services), investment, exchange rates, and above all energy. Each is covered below.

TRADE IN GOODS AND SERVICES

U.S. international trade in goods and services represents approximately one-quarter of the value of U.S. GNP and is an important provider of jobs for Americans here at home. In 1980, the United States exported $223.9 billion worth of goods and $92.5 billion worth of private services ($103.7 billion including government services). Nevertheless, on our merchandise trade we suffered a $25.3 billion deficit while our net balance on private services provided a surplus of $39.2 billion. The aggressiveness with which foreign nations are entering into international trade through preferential export-financing arrangements and other schemes is dictated by their priority goal of increasing domestic employment plus earning the foreign exchange necessary to finance imports of energy, goods and other materials. In a world trading system where major industrialized nations expect slower growth than in previous decades, there will be increased competition from many nations to sell goods in international markets.

Here in the United States, protectionist pressures have intensified and are highlighted by the substantial influx of Japanese goods, but we all lose from protectionism because the consumer will pay more for his purchases, U.S. industry will become more inefficient hiding behind import barriers, and retaliation by other nations will diminish our exports and thus have a tendency to reduce national income. Yet, in political terms, no nation can stand by and watch its own domestic market being flooded by imports and its production base eroded while its own firms do not find similarly open markets for exports to other countries. Whether in goods or services, the ability to trade in an international system with a minimum of tariff or nontariff barriers will help develop a competitive domestic industry which can benefit both the national interest and consumers. This benefit exists in the theoretical world; but the ideal free trade environment is rarely present under today's conditions, so government policies must adjust to an imperfect trading system.

Thus, while resisting protectionist tendencies at home, the U.S. Government must become more active in asserting the rights of U.S. exporters to open access to foreign markets, such as Japan and Europe. The United States entered the Kenedy Round negotiations beginning in 1962 with a view toward linking industrial and agricultural concessions into one package, especially vis-a-vis Europe. However, only tariffs on industrial goods were reduced, since Europe strongly resisted any agreement in the agricultural area. As a result, at literally the eleventh hour, the U.S. Government initialed the industrial package, thereby agreeing to only half a loaf. At the end of the 1960's and in the first few years of the next decade, the U.S. Congress felt that one of our most efficient exports had been dealt out of the benefits of lower trade barriers. As a result, the Congress mandated in the Trade Act of 1974 that future trade negotiations be carried on through sector-by-sector negotiations ensuring that "apples and oranges" were not traded against each other. Other provisions were added to ease the way for review of unfair import complaints by U.S. industry.

Since the Kennedy Round agreements were approved in the 1960's the United States has been trying in vain to get a substantial modification in the European Common Agricultural Policy (CAP) so that overproduction would not be encouraged, forcing the Europeans, as they do today, to heavily subsidize export sales to third markets in competition with the United States. We let an opportunity pass and it has hurt us for more than a dozen years. More recently, in a precursor of things to come, the United States has not been able to get the European Community (EC) to lower its 17-percent duty on semiconductors nor reduce its rules of origin requirements which Ambassador Brock has indicated increases the effective duty another 3-5 percent. This high duty, combined with the fact that EC telecommunication agencies were excluded from coverage in the Government procurement code, is part of the European strategy to build and maintain their own high technology electronics industry as part of the protective industrial philosophy the European Community has developed. Combined with export promotion programs, this spells not only very rough competition for U.S. firms, but in some cases unfair leverage.

With Japan, the ability of American companies to invest in that nation was restricted for many years, while Japan's ability to invest in the United States was left unimpeded. U.S. exports are closely tied with our investments abroad. For example, in 1980, $76.1 billion of total U.S. exports were to U.S. subsidiaries or affiliates in foreign nations. With this interlinking of trade and investment, the denial of U.S. access to a foreign market in Japan can have a profound trade impact.

The export financing war is one that the United States cannot shrink from. We must not deceive ourselves into thinking that the imperative to export is compatible with the notion that governments can resist financing exports on a below-cost basis.

Where some important foreign nations have seen an advantage in gaining a market foothold they have used export credits in their own interest. Only at the end of 1977 did the Carter administration finally realize that it would be impossible to come to a new "gentleman's agreement" on limiting export credit subsidies. Yet, our nation did nothing to meet this threat. While limiting our own credits for budgetary or philosophical reasons, we tried to negotiate a new agreement in 1978, 1979, and 1980. Only in the fall of 1981 did we finally come to an agreement—three and one-half years and many billions of dollars of exports later. This helped the Europeans to gain or broaden a marketing foothold in several important areas, such as airplane manufacturing with Airbus Industrie. In addition, the sharp appreciation of the dollar in the last year brought down the foreign currency price of exports of our major trading partners. In view of this additional cost advantage, the new "gentleman's agreement" on export financing could be viewed as a Pyrrhic victory—as the King of Epirus once said, "One more such victory over the Romans and we are utterly undone." Foreign nations will continue to use beneficial export financing rates in their own self-interest to increase their foreign exchange earnings and the only defense for the United States is a good offense. By showing that no nation is a long-term winner in this game, and by maintaining a deterrent, we can work towards eventual elimination of this trade distorting practice; but we cannot do it unilaterally, nor can we do it by severely curtailing the Eximbank's authority and funding.

INVESTMENT, NEW INSTABILITIES

One of the great U.S. strengths in world economic commerce is American direct investments abroad. The U.S. private sector made direct investment outflows from 1948 through 1980 amounting to $81.5 billion—and has received back on those investments $231.1 billion in earnings for a net cumulative gain to the balance of payments of $149.6 billion.

Employment by companies involved in overseas direct investment has increased more than it has in those companies with the fewest subsidiaries abroad. Thus, U.S. direct investments are a vital link in the employment chain within the United States. In addition, U.S. commercial involvement abroad is closely interlinked with U.S. trade. The latest Commerce Department benchmark survey completed for the year 1977 shows that 34 percent of U.S. exports are shipped to U.S. non-banking affiliates abroad, with 27 percent coming directly from U.S. parents here in the United States. Thus, in 1980, of the total U.S. merchandise exports of $223.9 billion, $76.1 billion were to U.S. subsidiaries abroad and $60.5 billion were directly from U.S. parents. The interaction of the United States with the international economy through multinational business arrangements is an asset for this nation which should not be jeopardized by encumbrances which stand in the way of efficiency and productivity of U.S. business abroad.

Nevertheless, new instabilities are present in the international marketplace which are affecting U.S. direct investments abroad. These include some of our own encumbrances such as the Foreign Corrupt Practices Act which is now being revised by the Congress. In addition, the extraterritorial application of some U.S. laws, such as antitrust, are oftentimes in growing conflict with the laws of other nations, and in some cases have led foreign countries to pass strict legislation prohibiting disclosure to U.S. antitrust authorities by their own firms.

The problem of direct investment performance requirements demanded by host countries is of growing concern with developed and less developed countries alike. Generally, these are requirements placed on the investor by the host country to the benefit of their own economy which sometimes harm trading partners. They include import limiting, export expanding, and other requirements on the operations of foreign investors. The incidence of trade distorting performance requirements among the world's major host countries for direct investment affects a significant portion of U.S. foreign trade. Any proliferation of these requirements will have a major adverse impact on both imports and exports of the United States, which only heightens the political pressure for protectionism. I believe it is time to recognize that local content requirements are a form of import restriction, just as export requirements are a form of export subsidy. Where these cannot be dealt with under GATT rules, or via Section 301 of the Trade Act, perhaps it is time to deny GSP or other special tariff rates to products which enter the United States as a result of such requirements.

Trade and investment cannot be separated as different issues; they are part of the same web of international economic relationships between nations. There must be stability and consistency in investment relationships among nations lest anti-investment and protectionist drives be unleashed in host and home countries alike. This means that the United States should develop policies designed to achieve true reciprocity for foreign investments. We must also strive to develop multilateral rules of the road to safeguard one of America's best economic assets. The United States should shift its policy stance on international direct investment to a positive one which recognizes the national interest in open two-way investment flows, and which (a) specifically welcomes foreign investment here, with limitations only on designated sources of sensitive sectors—which may soon have to include some energy fields; (b) indicates that the government intends to seek greater reciprocity for its investors abroad in addition to assuring equitable and nondiscriminatory treatment; (c) notes that performance requirements of host nations which adversely distort international trade patterns will be taken into account under the heading of reciprocity; and (d) mandates that U.S. Government regulatory agencies may consider reciprocity questions in granting authority or regulating foreign firms operating here in the United States.

The aim here is not one of tit-for-tat retaliation, nor do we favor any more formal U.S. investment screening process than now exists; rather the purpose is to give U.S. negotiators on a selective basis some "teeth" in pressing other countries to work toward, rather than away from the goals of reciprocal and national treatment. As I am sure your committee is aware, Mr. Chairman, attention within the executive branch currently focuses on four countries: Canada, France, Japan and Mexico. Progress will not come easily, for each of these countries has a special situation and its own political-economic imperatives. But the congressional oversight function should, I believe, monitor the problems and progress, or lack of it in this area.

EXCHANGE RATE INSTABILITY

Since 1971 the U.S. dollar has been free to float on foreign exchange markets. Its parity has been set by the market factors based upon the relative economic performance of major countries, including interest rates, and psychological factors influenced by such things as social and political instability. Under a floating regime, the exchange system theoretically should equilibrate the current account (trade in goods and services and short-term capital flows) and to some extent long-term capital as well. For the United States (a trade deficit country), a depreciating dollar should increase the ability of American exporters to sell more products abroad and the amount of imports will be reduced as they become more expensive. On the capital account, foreigners are induced to buy our assets at a bargain price and thus help finance the deficit.

When we entered the era of free floating, it was felt that the United States could achieve a greater degree of independence in designing our domestic macroeconomic policies. The argument was that we would not have to be concerned with the dollar's international relationship as we were under the rigid exchange rate system through the fifties and sixties. But it has not worked out that way. The United Kingdom and the U.S. have both found that floating exchange rates will not equilibrate payments imbalances in the face of domestic economic policies that feed inflationary pressures. Indeed, they tend to initiate a vicious circle: high inflation leads to more depreciation and to still more inflation. There is, moreover, resistance on the part of foreign nations to allowing a unilateral price advantage for the exports of the depreciating currency country, with resulting manipulation of the float. Many European countries try, not always successfully, to keep their currencies strong against the dollar (because that reduces their oil import bills) and they do not mind being weak against the currencies of their other trading partners.

Over the past decade, trade balances have not proved to be self-correcting and capital inflows have not increased (for financing purposes) without substantial increases in interest rates which can have a negative impact on the domestic economy. With the Europeans still complaining about the high U.S. interest rates, this may seem academic at the moment; but if, as we expect, the U.S. experiences large balance of trade and significant current account deficits this year and next, the dollar will begin to decline and the self-equilibrating arguments will rise again.

To rely on floating exchange rates to increase U.S. competitiveness may give illusory gains. In today's world of post-OPEC slow growth, a benign neglect approach to U.S. monetary policy will not solve our problem. Too fast a depreciation of the dollar creates a substantial negative impact on U.S. inflation with no assurance that an export boom will follow. Our major trading partners cannot politically allow the unilateral trading advantage that a 20- or 30-percent dollar depreciation affords (the magnitude of 1978–79) without resorting to competitive devaluations, nontariff barriers, or a rededication to increasing their own exports through government-financed export programs. Conversely, an unnaturally high dollar affects the U.S.

ability to earn the foreign exchange needed to carry on trade, aid, and military responsibilities.

The United States must search for a system which can maintain the flexibility and adjustability of floating while retaining some of the positive benefits of a more orderly exchange rate system.

Major swings in the parity of the dollar should be moderated by coordinated market interventions on the part of central banks. The relative economic differences between the United States and our major trading partners should influence the direction (up or down) of dollar parity changes, and policies should not seek to prevent basic movements, but rather to moderate the intensity of change and the instabilities that result from wide fluctuations.

ENERGY

At this time of increasing interdependence of the United States and world economies, nothing is more vital to U.S. economic wellbeing than the development of a comprehensive and coherent energy policy. This would remove much of the uncertainty now inherent in this market due to the power that Saudi Arabia, in particular, and OPEC in general, is now able to exercise over international oil prices and oil availability. This is one of the major destabilizing forces that affect U.S. economic performance.

There is no denying that Saudi Arabia is capable of influencing the price of oil, and all alternate energy sources, by its decisions to increase, maintain, or curtail its present daily output of crude oil. More important, Saudi statements and actions are also able to influence overall market expectations of future oil prices and supplies. These expectations can also profoundly impact the direction and magnitude of oil price fluctuations—generally in an upward direction. Thus, it is vital to remember that the prevailing international energy market structure, which provides the context in which most buyers and sellers make individual decisions, is far from a competitive market. It is a controlled market that has little resemblance to textbook assumptions about the working out of competitive forces.

The great danger in this regard is that, at the present time the United States and other oil-importing countries have adopted a more relaxed view about energy. There is a sense that market forces have been working and will continue to do so. As a result of the 1979–80 doubling of oil prices and the slow-to-moderate growth in overall real demand, the demand for oil, especially imported oil, has slackened to the point of creating a "glut." But one must also ask—at what price has this been accomplished and to what lasting benefit?

This reduced consumption has been accompanied by extremely high rates of inflation, high and rising levels of unemployment, and a halving or worse of real growth rates among most industrial oil-importing countries when compared with the pre-1973–74 period. These macroeconomic patterns have clearly intensified the competition for world markets, making it even more difficult for this country and its trading partners to pursue liberal trade and investment policies.

I take little satisfaction from present Saudi and OPEC announcements on oil prices made earlier this fall, and recently repeated, that oil prices would be stable for all of 1982. Rather, given the state of market demand immediately preceding and following this announcement, real prices for oil should be falling if competitive forces actually existed. Similarly, if one assumes that the present recession in the United States reverses itself sometime in mid-1982, as the Administration now hopes, and that real demand turns up, it is not hard to imagine that this recent promise of stable oil prices for all of 1982 will be modified. Moreover, the Saudis are still determined to implement their long-range pricing strategy under which oil consumers will pay more in real terms, whether their economies do well or not.

It is therefore vital for the Administration and the Congress to recognize that it is premature to relax about energy and assume that market forces will solve all our problems. The government needs to adopt policies that reenforce those elements of competition that now exist, aiming always to erode OPEC's hold over the market. This means that we need to encourage the use of coal by industrial users and public utilities—move on schedule to deregulate natural gas, accelerate both domestic oil production and the development of synthetic fuels, and support the growth of nuclear power, without compromising human safety and environmental concerns.

We must simultaneously encourage energy conservation and seek to diversify overseas production of oil. In particular, indigenous hydrocarbon (as well as new and renewable) sources of energy need to be developed in the Third World. Servicing their large debt burdens for past borrowings (much of it to finance the fifteenfold increase in oil prices during the past decade, as depicted in the accompanying Washington Post chart), and paying for current consumption of imported oil are draining their scarce foreign exchange resources and adding to the world's economic stagflation. In addition, of course, every barrel of non-OPEC production weakens the cartel's dominant market power. Finally, we need to develop more direct ways of recycling petrodollars so as to put that surplus of money where there is a surplus of demand, as in most LDC's, so they can purchase from the industrial world's surplus capacity and benefit all concerned.

CONCLUSION

Mr. Chairman, I have tried to give an overview of some of the forces and instabilities which will continue to buffet the world economy in the eighties. It will be a tough, competitive place. But if we persevere in our commitment to open trade and investment policies, enhance U.S. productivity, capital formation, and R&D, seek ways of stabilizing exchange markets, and above all press forward with energy programs in both the private and public sectors so as to establish true market forces in energy pricing, then the latter years of the decade and the nineties can see a return to the patterns of sustained real growth and reduced inflation and unemployment we enjoyed in the sixties. But if we fail to do these things, the outlook is for more stagflation and beggar-thy-neighbor policies everywhere. Even worse scenarios can be imagined.

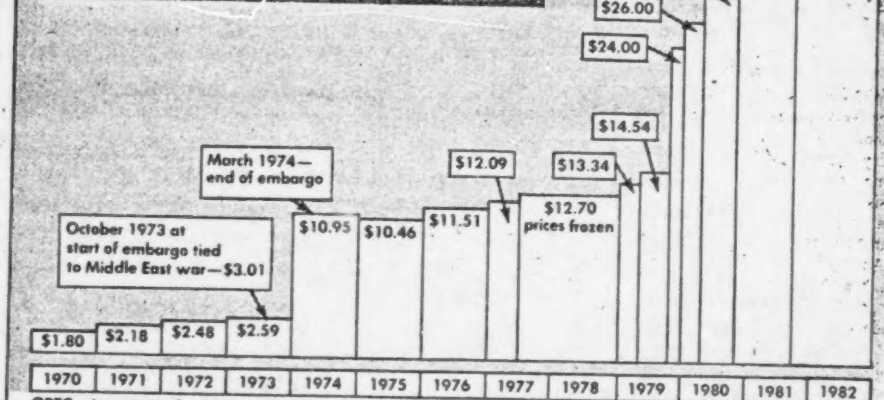
To sustain a liberal trade and open market approach in the current environment will not be easy at best. And it may be impossible if other countries are perceived to be playing the game unfairly. Thus to make such policies politically feasible will require us to be more aggressive in insisting on fair trade, reciprocal treatment, enforcement of GATT agreements and in maintaining "a good offense" in such areas as taxation of foreign-source income, export financing, and antitrust.

Most of all, to deal with these problems in an unstable and uncertain world economy, we as a nation need to raise our level of attention to and understanding of global economic issues, to better organize the national response and to balance the short-term and parochial with longer term and more "systemic" considerations. Your committee's oversight hearings are an important contribution to this process.

Thank you.

THE WASHINGTON POST *Friday, October 30, 1981* A25

OPEC BENCHMARK PRICES 1970-1981



OPEC prices are set for the so-called benchmark or "marker" light oil sold by Saudi Arabia, a high quality oil that is more easily refined. Actual market prices, however, have varied widely by as much as several dollars depending on quality and production location, as well as general market conditions. The benchmark price, nevertheless, is the general guide against which other prices are determined.

Nearly all oil in the non-communist world, including non-OPEC production from countries such as Mexico or Norway, is sold at the OPEC set price. Most of this oil is sold under long-term contracts, but some is sold on a one-time basis on a "spot" market. Depending on market conditions, as much as 5 per cent of the world's exports are sold on a spot basis. Prices quoted are for a 42-gallon barrel.

1980 two-tier pricing system
- Saudi Arabia $32.00
- Other 12 OPEC $36.00 base price with special surcharges in some cases taking prices to $41 per barrel

October 29, 1981 unified pricing system
- $34.00 a barrel for all member countries with up to $4.00 surcharge allowed
- Price freeze through 1982

The Washington Post

Chairman GIBBONS. Thank you, Mr. Stanley.

The remarks I am making are not criticisms of this administration because I know how strongly this administration has struggled to get an export policy going. It has had all kinds of other problems that seemed to be higher in priority and, like you, I can't fault what I hear from them on the administration of that policy or its putting together. Substantively, I think it is correct. Repeatedly as a government we continue to fall behind in the implementation of those goals. I don't know what the solution is. Obviously raising the public's level of understanding is a part of it. But that may just raise the frustration that the public feels in dealing with its Government when the Government policy is ineffective.

You are an economist and you look at things from that point of view. But let me ask you, do we have a proper setup to execute a trade policy, particularly an export policy?

Mr. STANLEY. I think we have pieces of it, but the problem is that sometimes the left hand either doesn't know what the right hand is doing or tries to counteract it and I don't think there is a central direction and thrust that you need to have. For example, you need a cohesive, comprehensive national export policy with the implementation tools in place with the congressional and public support that it needs. While I don't think that a new CIEP by itself could necessarily solve all those problems, I think you would at least get a centralization in one place with the President's authority behind it to pull together what Commerce, State, Treasury and various other agencies do.

Chairman GIBBONS. Well, you know, I have been very reluctant to interfere or even suggest interference with the kind of structure we now have, because we just got through reorganizing and I realize that every time you reorganize something you lose about a year at least as far as affirmative forward thrust is concerned. It seemed to me we always had so many other problems on the table that it would be counterproductive to talk about a new structure or new organization for our Government now.

I am slowly changing my mind, because I am not sure that with the structure we now have we could ever raise this challenge that we have before us to a high enough level. Do you have any observations you would like to make on that?

Mr. STANLEY. I am not sure whether you are inquiring about the possibility of a single department approach?

Chairman GIBBONS. Well, I am thinking about that. I am not ready to marry it yet, or buy it yet.

Mr. STANLEY. My own view on that, Mr. Chairman, is that while there are some advantages there are some disadvantages. If you pull together out of the other departments the expertise necessary to man such a department, you are still not going to get much saving in the bureaucracy. State, Treasury, Commerce, whatever, are still going to have to be involved. If you have them in one department, you have some strength but you also have a tendency perhaps for that department to be cut out of the mainstream of daily action as they happen in the cable traffic and so on.

I would, myself, prefer to move the other way and decentralize as many operations as possible out of the White House and into the International Trade Administration, but create a stronger international coordinating mechanism such as we had under Peter Peterson. That worked, I thought, very well for 2 years, and then various things happened and the Council sort of went downhill and was eventually abolished. But I think maybe it is time to try that again.

Chairman GIBBONS. What was Peter Peterson doing that we are not doing now?

Mr. STANLEY. I think he was trying to add up the pieces of the big picture. He was trying to see where monetary policy, trade policy, investment and tax policy came together, trying to identify the elements of important American strength that could be used, for example, in export promotion. I think these things are going on, but I don't have the same sense that one man with the ear of the President is spending full time putting it together. I think Mr. Brock and his colleagues are so tied up with particular negotiations about particular things that there isn't this sense of strategic focus.

Chairman GIBBONS. What was unique about Peterson's position that no longer exists?

Mr. STANLEY. Well, in the first place it was a statutory organization set up by Congress with the backing of the administration. Of course, the USTR is also, in a sense, a statutory organization. But the fact that there was a council which could bring together agencies, not at the staff levels but at the cabinet or subcabinet levels simply gave this whole subject the higher level of attention in the executive branch than it seems to have today.

Chairman GIBBONS. Would it be possible to take the office of USTR, which has a coordinating function, and give it a higher mission such as the one that you think that Peterson had?

Mr. STANLEY. Sir, I think that could be done. It could almost be done within existing terms of reference, but it would take Presidential action to say to Mr. Brock or whomever, we want to establish an interagency council. There are innumerable interagency councils, committees, and so forth, but none that focuses exclusively on this subject. We want you to lead it. And I think it could be done.

Chairman GIBBONS. I am impressed now that there are so many interagency councils that I don't know when they have a chance to do anything other than try to figure out when they are supposed to meet and when the other one is not. I don't know how they would ever get to come to all the meetings. That is why I am exploring. Is it possible to structure the USTR office, which I think performs a useful service in that it is, in some senses, a super cabinet level position, to bring together the interests in trade? Is it possible to strengthen that or is it desirable or can it be done?

In other words, why did it work when Peterson had charge of it and why is it perhaps not working today, in your opinion?

Mr. STANLEY. I think it could be done, but it would require a clear Presidential delegation of authority, because, as you well know, Mr. Chairman, this town is characterized by constant turf fights. Treasury doesn't want to let anybody get its hand on monetary policy in any way, shape or form. They don't want to be subjected to any interagency consultation. The IRS, almost by statute, is independent. It is supposed to be an administrative agency. For example, when they proposed important regulations on taxation of oil companies, this was clearly a matter that affected the way in which energy would be sought in the world, and there was no consultation whatsoever by the IRS with either the State Department or the Energy Department.

Chairman GIBBONS. It is a foreign tax credit matter, is that right?

Mr. STANLEY. Yes; sir. So I think if you had someone with that kind of authority and the President made it clear that he wanted him to do that job it could be done within the existing framework very easily.

Chairman GIBBONS. I guess the question is how do you do that?

Mr. STANLEY. Well, that gets back to your question about how do you persuade your colleagues in the House and the public at large that an export policy is important. How do you persuade the President that this is important enough to give priority to it and perhaps to overrule Mr. Stockman on some of the things that he is doing?

Chairman GIBBONS. Do we suffer from the problem of trying to put export policy in the same office as import policy? Import policy obviously is controversial. People go off in all different directions on that. Could we divorce those two functions and perhaps get moving in one direction? Would that be desirable?

Mr. STANLEY. I am not really sure, Mr. Chairman. I think some advantages would be obtained on the operational side so that you could have people carrying out export promotion policies. But I think at the conceptual level and the international negotiating level they have to come together because we are not going to be able to send someone to Japan to talk only about our exports and not also expect to hear back and have some dialogue about our import policy. So it seems to me in our negotiating posture they are inextricably linked conceptually, but I take your point that one has a consensus behind it and the other is controversial. I guess I would have to say that on balance I doubt they could be divorced except perhaps in a specific operational sense of carrying out export programs.

Chairman GIBBONS. Mr. Vander Jagt?

Mr. VANDER JAGT. I have no questions. Thank you very much.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Yes; I have a question about your testimony. I used to be a fan of CIEP, too, but it couldn't stand the competition in the executive branch, obviously. My question is about exchange rate instability here. You indicate that we ought to try to take the peaks and valleys out of the most severe of the fluctuations by intervention. As you know, intervention has come to have a bad name and there has been a thought that you can't really negate any solid economic influence. You can mitigate them or you can take, perhaps, some speculation out of it. For example, with the U.S. interest rates so high was there any way that intervention could have reduced, say, the value of the dollar against the value of the mark?

Mr. STANLEY. No; I don't think so. I think that was a basic force pushing our dollar value up, and the market was simply responding to the greater returns on investments in this country. But I think there were times in that process when there really were kind of erratic fluctuations. With coordinations with other central banks we might have done a little more. This is not something new. It had been done for many years. This administration has a very strong intellectual bias against it. In fact, the Under Secretary of the Treasury told me the only time he had authorized intervention was the day that President Reagan was shot. That is a pretty extreme case and there may be others where this can be done.

I agree completely. You cannot moderate basic movements in currencies. But you know, yourself, what effect there is: you make a contract one day and all of a sudden your currency has depreciated or appreciated erratically, and what that kind of uncertainty does to your business planning. I think maybe a little bit more than we are now doing can be done but stopping short of large-scale efforts to affect basic movements.

Mr. **Frenzel**. Well, as you know the administration is supported by such unlikely fans as chairman of the Joint Economic Committee, Mr. Reuss, and I think it will be kind of hard for us to get much of an intervention program going, at least in the foreseeable future.

Thank you for your important testimony.

Chairman **Gibbons**. Yes, sir, very fine.

Mr. **Stanley**. Thank you, sir.

Chairman **Gibbons**. Our next witness will be Mr. Paul R. Sacia, who is the legislative assistant for the National Farmers Union.

We welcome you, sir, and you may proceed as you wish.

STATEMENT OF PAUL R. SACIA, LEGISLATIVE ASSISTANT, NATIONAL FARMERS UNION

Mr. **Sacia**. Thank you, Mr. Chairman.

I am Paul Sacia, legislative assistant for the National Farmers Union. We thank you for conducting this hearing today. I will try to keep my remarks somewhat abbreviated for you. Because a significant share of U.S. farm production must look to export outlets, members of the National Farmers Union have taken a keen interest in factors which affect such trade.

At our convention this year, our delegates adopted a policy statement on international cooperation and the family farm which appears as attachment A appended to this testimony.

These recommendations present our views on a more effective trade policy, including our suggestions for trade expansion, revitalization of the food-for-peace program, development and implementation of international commodity agreements with meaningful pricing provisions access of our farmers to world markets and development aid to the emerging nations.

Despite the fact that U.S. agricultural exports reached a record $40.5 billion in value in fiscal 1980 and appear to be heading toward a total of $46 billion in 1981, there are several factors and disincentives which inhibit a substantially better performance.

If our farm exports are to make the expected gain, the difference will have to come from higher prices rather than larger volume.

Yet, in the former Carter administration and now in the Reagan administration there has been almost a total preoccupation with matters of access and volume.

Volume times price gives us the total value of our export efforts, yet the executive branch of the Federal Government is almost blind to the need for fair and remunerative prices on our exports.

Although in the past decade, the U.S. Government has engaged in a variety of trade promotion activities, including market information, credit assistance, tax incentives, trade missions, and exhibitions and several bills are before the Congress which would spur trade promotion activities, these activities and proposals all ignore the need for fair prices on our exports.

We contend, therefore, that the existing U.S. agricultural trade policy—and the proposals of the Reagan administration for its new trade policy—are seriously misdirected in failing to seek any strategy to lift and stabilize farm export prices and earnings.

George W. Stone, president of the National Farmers Union, has pointed out that by the simple expedient of raising the export price of major grains to the cost of production, our agricultural trade surplus, which was $23.2 billion in 1980, could reach $30 billion and put our overall trade balance into a "black figure" for the first time since 1975.

President Stone has noted that such an increase could be achieved in grain export prices without any loss in market volume through adoption of an international grains agreement with a price range linked to the cost of production. Other major exporting nations would be fully agreeable with such a course, but it has been the continued and obstinate refusal of the U.S. Govenment to entertain such a policy which has blocked its adoption.

The result is that we continue to sell our farm products at giveaway prices in the export markets, despite overall trade deficits averaging $26 billion a year in the past 4 years.

Our trade deficit with Japan, for example, is expected to be $10 billion in 1981, the same as last year. Yet we continue to ship our grain there at bargain prices. Upon putting the U.S. grain into Japanese commercial channels, the national marketing agency roughly doubles the price at which it procured the American grain. Obviously, there is room for a fairer export price in such a context.

We continue to pay OPEC prices for imported oil, but sell the same countries our grain and other farm products at clearance prices.

The most damaging disincentive to expanded exports and higher export earnings is the refusal to take actions in our Federal executive branch to price our exports at remunerative levels. This could most easily be achieved through multilateral commodity agreements with strong economic provisions.

But, we have had a long history of disinterest and outright opposition to international commodity agreements with economic provisions. After wrecking the 1967 international wheat agreement by undercutting its provisions in 1969, it was the U.S. attitude largely which caused the 1971 agreement to be a "toothless" one. That agreement has now been extended six times, not once including economic measures.

When serious talks about a new agreement were held in the International Wheat Council in June 1977, the U.S. delegate declared:

"We do not want an agreement that would attempt to increase the average price of wheat above its long-term equilibrium level."

In December 1977, an ERS official, in an unusually candid statement, acknowledged that:

"Clearly, the thrust of the U.S. proposal is to force the Europeans to open up their markets, not to stabilize grain prices per se."

Most recently, the U.S. delegation at the International Wheat Council talks at Madrid, Spain, torpedoed any hopes for an international coordinated world security food reserve as part of an international grains agreement. This bias against grain producers is typical. It has been characteristic of our attitude toward other commodity proposals. The tragedy is that in the international free market, which the White House espouses, the United States is doomed to be a residual supplier of agricultural products at giveaway prices, in every circumstance in which there are excess supplies of a commodity.

The long-term experience under the international wheat agreements from 1949 through 1969 was that, in the context of orderly marketing conditions and pricing conditions, the United States was able to double its wheat export volume, at the same time doubling its percentage share of the world wheat trade.

The bias against international commodity arrangements which would lift and stabilize raw materials prices is detrimental to American farmers directly, but also has other severe impacts because it frustrates the possibility of developing countries to earn the purchasing power with which they could buy American farm and industrial goods.

Currently, over 50 percent of our farm exports go to developing countries, along with 38 percent of our manufactured goods, but we are unwilling to help them into the economic mainstream by allowing them to earn profitable prices for their raw materials.

We appreciate the concerns of those who are alarmed at the trend to protectionism apparent in this country and the world, but it will not be discouraged by simple preachments about the sublimity of the free market.

The textbook idea of a "free market" does not exist in the "real world," at least not in agricultural commerce.

What is described as a "free market" is a market dominated and manipulated by multinational trading companies to the detriment usually of both producers and consumers.

Protectionism is the most natural reaction imaginable to chaotic, unstable, and depressed markets.

Without a system in which there is a reasonable floor under world prices, together with codes of conduct or other measures for orderly trade, we see little prospect that raw materials producers, exploited as they have been historically, will be lured away from what they see as security in protectionist policies.

Thus, those who want to dissuade farmers or others from protectionism need to do more than recite textbook platitudes about free markets—they need to provide an alternative to protectionism.

The mood of protectionism will fade rapidly when producers find themselves in any economic climate which eliminates the worst of the risk and the chaos and instability in world markets.

Most enlightened and civilized nations have taken some modest steps to "taming the free market." No one is seriously proposing that the market system be abolished, nor that all production and marketing decisions in agriculture be made at a desk in Washington, D.C.

Domestic farm programs do not abolish the market and incentive systems—they simply seek to make the system work better for farmers and the consumers and industries of the Nation.

Similarly, international commodity agreements do not set aside the market system, but they recognize that everything cannot be left to chance or the dominance of the international traders.

There are other disincentives to expanded exports and export earnings which we have included in our testimony but which I will pass over at this time.

It should be noted, as we evaluate the prospects for an expansion of global trade in agricultural products, that most of the gains achieved in the past 20 years are attributable to the pull of economic demand resulting from fuller employment in the emerging nations, rather than to any success in reducing trade barriers or successfully penetrating formerly restricted markets.

The remaining barriers to trade are no longer of great consequence. It is therefore unlikely to be productive to continue to focus on market penetration.

It will likely be more fruitful to look toward cooperative measures to lift raw commodity prices to more satisfactory levels and to kinds of development aid to emerging nations as will augment their creation of purchasing power.

In conclusion, we think it is important to evaluate the major pronouncements on world agricultural trade recently made for the Reagan administration by Secretary of Agriculture John R. Block and by Ambassador William Brock, the President's Special Trade Representative.

Representing the administration at the World Food Council session at Novy Sad, Yugoslavia on May 25, Secretary Block stated that:

> U.S. domestic policies encourage agricultural production to meet world food needs within the framework of a market economy.

Secretary Block further declared that:

> The United States believes that individual country reserve systems which operate in response to price signals from the world wheat market, releasing reserves when the supply is short and holding reserves when the supplies are plentiful, are preferable to internationally-coordinated programs presently under discussion.

Ambassador Brock, in his appearance on July 8, before subcommittees of the Banking and Finance Committees spelled out a similar open market or free market philosophy as the Reagan administration's new trade policy.

Ambassador Brock, in his statement, acknowledged the "growing intervention in economic affairs on the part of governments," yet the main thrust of his testimony was to suggest that the United States should withdraw from such intervention.

We think that the U.S. Government should recognize and pursue its own self-interest in world trade, but the administration statement seems instead to be an abdication of such responsibility.

The Ambassador contends that the President's economic recovery program will strengthen U.S. agriculture and improve its competitive position in world trade. More likely, it seems to us, American agriculture will be left as a residual supplier in world trade.

The Brock statement spells out five central components or goals of the administration trade policy—strong noninflationary growth, reduction of export disincentives, effective enforcement of trade laws and agreements, effective adjustment aid, and reduced Government barriers to the flow of trade and investment.

We find these goals desirable as a whole, but see little in their achievement which would get at the fundamental problems of low export prices and submarginal export earnings.

The Ambassador's pledge for a high priority for export promotion by the Commerce and Agriculture Departments means little. The Departments already are doing much in that field and continued preoccupation with such activities simply diverts attention from the price problem.

The Brock statement that it will be "U.S. policy to place primary reliance on market forces to facilitate adjustment in affected industries" is another indication of abdication of responsibility—another way of saying—don't look to the Federal Government for any help.

The declaration that "we will seek to integrate the developing countries more fully into the international trading system," is an empty phrase as long as the major industrial nations continue to pursue the policies of cheap food and cheap raw materials.

We welcome the concern that is expresed by the Ambassador about "creeping bilaterialism," which poses a threat to U.S. commerce and the world trading system as a whole.

In agriculture, we do not think that bilateral agreements are very desirable. They almost never include price-enhancing provisions. But the bilateral pacts do help pin down markets in that they are preferable to the chaos and instability of the free market.

Bilateral pacts will proliferate as long as there is a vacuum. The much preferable approach is to seek multilateral pacts including all the major producers and importers of a particular commodity.

On balance we find the Block/Brock pronouncements lacking any indication that the U.S. Government will be really helpful in assisting American farmers to win wider markets at stable and remunerative prices.

Thank you very much for your time.

[The prepared statement follows:]

STATEMENT OF PAUL R. SACIA, LEGISLATIVE ASSISTANT, NATIONAL FARMERS UNION

I am Paul R. Sacia, legislative assistant on the staff of the National Farmers Union, an organization of some 325,000 family-scale farmers across the nation.

Because a significant share of U.S. farm production must look to export outlets, members of the National Farmers Union have taken a keen interest in factors which affect such trade.

At the 79th annual convention of National Farmers Union, held March 1-4, 1981, at Orlando, Florida, our delegates adopted a policy statement on "International Cooperation and the Family Farm," which appears as Attachment "A", appended to this testimony.

These recommendations present our views on a more effective trade policy, including our suggestions for trade expansion, revitalization of the Food-for-Peace program, development and implementation of international commodity agreements with meaningful pricing provisions, access of our farmers to world markets and development aid to the emerging nations.

Despite the fact that U.S. agricultural exports reached a record $40.5 billion in value in fiscal 1980 and appear to be heading towards a total of $46 billion in 1981, there are several factors and disincentives which inhibit a substantially better performance.

If 1981 farm exports are to make the expected gain the difference will have to come from higher prices rather than larger volume.

Yet in the former Carter Administration and now in the Reagan Administration there has been almost a total preoccupation with matters of access and volume.

Volume times price gives us the total value of our export efforts, yet the executive branch of the Federal Government is almost blind to the need for fair and remunerative prices on our exports.

Although in the past decade, the U.S. Government has engaged in a variety of trade promotion activities, including market information, credit assistance, tax incentives, trade missions and exhibitions and several bills are before the Congress which would spur trade promotion activities, these activities and proposals all ignore the need for fair prices on our exports.

We contend, therefore, that the existing U.S. agricultural trade policy—and the proposals of the Reagan Administration for its new trade policy—are seriously misdirected in failing to seek any strategy to lift and stabilize farm export prices and earnings.

George W. Stone, president of the National Farmers Union, has pointed out that by the simple expedient of raising the export price of major grains to the cost of production, our agricultural trade surplus, which was $23.2 billion in 1980, could reach $30 billion and put our overall trade balance into a "black figure" for the first time since 1975. (The $5.2 billion trade balance in that year was importantly attributable to the relatively strong grain prices prevailing at that time, which lifted the agricultural trade surplus from $7.2 billion in 1973 to $12.4 billion in 1975.)

President Stone has noted that such an increase could be achieved in grain export prices without any loss in market volume through adoption of an international grains agreement with a price range linked to the cost of production. Other major exporting nations would be fully agreeable with such a course, but it has been the continued and obstinate refusal of the U.S. Government to entertain such a policy which has blocked its adoption.

The result is that we continue to sell our farm products at give-away prices in the export markets, despite overall trade deficits averaging $26 billion a year in the past four years.

Our trade deficit with Japan, for example, is expected to be $10 billion in 1981, the same as last year. Yet we continue to ship our grain here at bargain prices. Upon putting the U.S. grain into Japanese commercial channels, the national marketing agency roughly doubles the price at which it procured the American grain. Obviously, there is room for a fairer export price in such a context.

We continue to pay "OPEC" prices for imported oil, but sell the same countries our grain and other farm products at clearance prices.

The most damaging disincentive to expanded exports and higher export earnings is the refusal to take actions in our federal executive branch to price our exports at remunerative levels. This could most easily be achieved through multilateral commodity agreements with strong economic provisions.

But, we have had a long history of disinterest and outright opposition to international commodity agreements with economic provisions. After wrecking the 1967 International Wheat Agreement by undercutting its provisions in 1969, it was the U.S. attitude largely which caused the 1971 agreement to be a "toothless" one. That agreement has now been extended six times, not once including economic measures.

When serious talks about a new agreement were held in the International Wheat Council in June 1977, the U.S. delegate declared: "We do not want an agreement that would attempt to increase the average price of wheat above its long-term equilibrium level."

In December 1977, an ERS official, in an unusually candid statement, acknowledged that: "Clearly, the thrust of the U.S. proposal is to force the Europeans to open up their markets, not to stabilize grain prices per se."

Most recently, the U.S. delegation at the International Wheat Council talks at Madrid, Spain, torpedoed any hopes for an internationally-coordinated world security food reserve as part of an international grains agreement.

This bias against grain producers is typical. It has been characteristic of our attitude toward other commodity proposals.

The United States, for years, stayed out of the International Sugar Agreements and then joined the 1978 agreement only after insisting that nothing more than a bargain-basement range of prices be stipulated.

The United States has been an anti-producer element for years in the International Coffee Agreements.

We have refused to join the new International Cocoa Agreement.

We objected strenuously to strong economic provisions in the UNCTAD Integrated Commodity Program, balked at ample funding for the Common Fund, and dragged our feet on its implementation.

We have not been very supportive of our own producers in the Multifibre Agreement, now being renegotiated.

Largely because of our disinterest in giving raw commodity producers some market power, the international agreements on dairy and meats have been solely consultative in nature.

The tragedy is that in the international free market, which the White House espouses, the United States is doomed to be a residual supplier of agricultural products at give-away prices, in every circumstance in which there are excess supplies of a commodity.

The long-term experience under the International Wheat Agreements from 1949 through 1969 was that, in the context of orderly marketing conditions and pricing conditions, the United States was able to double its wheat export volume, at the same time doubling its percentage share of the world wheat trade.

The bias against international commodity arrangements which would lift and stabilize raw materials prices is detrimental to American farmers directly, but also has other severe impacts because it frustrates the possibility of developing countries to earn the purchasing power with which they could buy American farm and industrial goods.

Currently, over 50 percent of our farm exports go to developing countries, along with 38 percent of our manufactured goods, but we are unwilling to help them into the economic mainstream by allowing them to earn profitable prices for their raw materials.

We appreciate the concerns of those who are alarmed at the trend to protectionism apparent in this country and the world, but it will not be discouraged by simple preachments about the sublimity of the free market.

The textbook idea of a "free market" does not exist in the "real world," at least not in agricultural commerce.

What is described as a "free market" is a market dominated and manipulated by multinational trading companies to the detriment usually of both producers and consumers.

Protectionism is the most natural reaction imaginable to chaotic, unstable and depressed markets.

Without a system in which there is a reasonable floor under world prices, together with codes of conduct or other measures for orderly trade, we see little prospect that raw materials producers, exploited as they have been historically, will be lured away from what they see as security in protectionist policies.

Thus, those who want to dissuade farmers or others from protectionism need to do more than recite textbook platitudes about free markets—they need to provide an alternative to protectionism.

The mood of protectionsim will fade rapidly when producers find themselves in any economic climate which eliminates the worst of the risk and the chaos and instability in world markets.

Most enlightened and civilized nations have taken some modest steps to "taming the free market." No one is seriously proposing that the market system be abolished, nor that all production and marketing decisions in agriculture be made at a desk in Washington, D.C.

Domestic farm programs do not abolish the market and incentive systems—they simply seek to make the system work better for farmers and the consumers and industries of the nation.

Similarly, international commodity agreements do not set aside the market system, but they recognize that everything cannot be left to chance or the dominance of the international traders.

There are other disincentives to expanded exports and export earnings, among them:

The virtual neglect of the trade development aspects of Public Law 480, together with little emphasis on food for work assistance, which would increase the buying power of developing country residents for food and other necessities. See Attachment "B."

The lack of provisions in the Trade Reform Act of 1974 (P.L. 93-618), the Trade Agreements Act of 1979 (P.L. 96-39), and the Export Administration Act of 1979 (P.L. 96-72), to make import injury relief readily available to farmers and the agricultural industry. The adjustment assistance provisions are largely designed for industrial cases and are almost impossible for farmers to use effectively.

The tendency of the International Trade Commission (ITC) to be reluctant as regards findings of injury from imports, refusing to recognize such injury unless the imports are a sole or predominant cause of economic difficulties in an industry.

There is still no sufficient provision in the law to avoid damage to farmers from government embargoes or limitations upon agricultural exports.

Section 1002 of the Food and Agriculture Act of 1977 is still operative, but it applies only to stoppages due to situations in which domestic supplies might become short. It does not apply to situations in which the limitations are undertaken for national security or foreign policy excuses.

The 1981 farm bill should include a very specific provision lifting price supports to 100 percent of parity on any commodity on which exports are limited for whatever reason.

There have been six embargoes or export limitations on agricultural products in the past 15 years. It is conceivable that there may be additional stoppages, either due to consumer shortages or for political reasons. In fact, the State Department reportedly is seeking provision for suspension of shipments in any new U.S./U.S.S.R. grain agreement. See Attachment "C" for summary of past stoppages.

It should be noted, as we evaluate the prospects for an expansion of global trade in agricultural products, that most of the gains achieved in the past 20 years are attributable to the pull of economic demand resulting from fuller employment in the emerging nations, rather than to any success in reducing trade barriers or successfully penetrating formerly restricted markets.

The remaining barriers to trade are no longer of great consequence. It is therefore unlikely to be productive to continue to focus on market penetration.

It will likely be more fruitful to look towards cooperative measures to lift raw commodity prices to more satisfactory levels and to kinds of development aid to emerging nations as will augment their creation or purchasing power.

In conclusion, we think it is important to evaluate the major pronouncements on work agricultural trade recently made for the Reagan Administration by Secretary of Agriculture John R. Block and by Ambassador William Brock, the President's Special Trade Representative.

Representing the administration at the World Food Council session at Novy Sad, Yugoslavia on May 25th, Secretary Block stated that: "U.S. domestic policies encourage agricultural production to meet world food needs within the framework of a market economy."

Secretary Block further declared that: "The United States believes that individual country reserve systems which operate in response to price signals from the world wheat market, releasing reserves when the supply is short and holding reserves when the supplies are plentiful, are preferable to internationally-coordinated programs presently under discussion."

This preference for a market-oriented approach was reiterated by the USDA delegate at the International Wheat Council meeting late in June in Madrid.

Ambassador Brock, in his appearance on July 8th, before subcommittees of the Banking and Finance Committees spelled out a similar open market or free market philosophy as as the Reagan Administration's new trade policy.

Ambassador Brock, in his statement, acknowledged the "growing intervention in economic affairs on the part of governments," yet the main thrust of his testimony was to suggest that the United States should withdraw from such intervention.

We think that the U.S. Government should recognize and pursue its own self-interest in world trade, but the Administration statement seems instead to be an abdication of such responsibility.

The Ambassador contends that the President's economic recovery program will strengthen U.S. agriculture and improve its competitive position in world trade. More likely, it seems to us, American agriculture will be left as a residual supplier in world trade.

The Brock statement spells out five central components or goals of the Administration trade policy (strong non-inflationary growth, reduction of export disincentives, effective enforcement of trade laws and agreements, effective adjustment aid, and reduced government barriers to the flow of trade and investment.)

We find these goals desirable as a whole, but see little in their achievement which would get at the fundamental problems of low export prices and submarginal export earnings.

The Ambassador's pledge for a high priority for export promotion by the Commerce and Agriculture departments means little. The departments already are doing much in that field and continued preoccupation with such activities simply diverts attention from the price problem.

The Brock statement that it will be "U.S. policy to place primary reliance on market forces to facilitate adjustment in affected industries" is another indication of abdication of responsibility—another way of saying—don't look to the Federal Government for any help.

The declaration that "we will seek to integrate the developing countries more fully into the international trading system," is an empty phrase as long as the major industrial nations continue to pursue the policies of cheap food and cheap raw materials.

We welcome the concern that is expressed by the Ambassador about "creeping bilateralism," which poses a threat to U.S. commerce and the world trading system as a whole.

In agriculture, we do not think that bilateral agreements are very desirable. They almost never include price-enhancing provisions. But the bilateral pacts do help pin down markets and in that are preferable to the chaos and instability of the free market.

Bilateral pacts will proliferate as long as there is a vacuum. The much preferable approach is to seek multilateral pacts including all the major producers and importers of a particular commodity.

On balance we find the Block/Brock pronouncements lacking any indication that the U.S. Government will be really helpful in assisting American farmers to win wider markets at stable and remunerative prices.

ATTACHMENT "A"

1981
POLICY
OF
NATIONAL FARMERS UNION

ARTICLE II
INTERNATIONAL COOPERATION AND THE FAMILY FARM

American farmers today live and work in a global food and agricultural economy. The prices they receive are dependent primarily upon what their commodities will bring in world trade. This, in turn, depends upon cooperative efforts among the nations to maintain prices for raw commodities at fair levels and provide for orderly conduct of commerce.

A. International Trade

We favor the negotiation of agreements with other nations to achieve expansion of international trade.

Expansion of United States agricultural exports is one of the primary purposes of Public Law 480, the "Agricultural Trade Development and Assistance Act" (Food for Peace). But this function has been seriously neglected in recent years. The development of two-way trade, as a means of enabling poor and hungry people to get jobs and earn money to buy food both from their own farmers and exporting countries, is consistent with the humanitarian purposes of the Act.

We recommend that the Act be amended to provide:

1. That positive measures be required in P.L. 480 agreements to assure increased employment or by other means to assure that markets for food in the importing countries will be expanded in balance with the resulting increase in the supply.

2. That P.L. 480 agreements be designed to foster expanded markets for United States farm commodities through the development of long-range, two-way trade between the United States and countries receiving P.L. 480 imports.

Particular emphasis should be directed to development and expansion of markets in countries with which we are able to maintain mutually advantageous trade. There is a great potential to develop markets in the developing nations by this process, as we did a generation ago in Japan, Europe, Korea and others.

We urge that 100 percent of parity price supports be automatically triggered under new farm legislation if future embargoes are imposed, whatever the reason.

B. International Commodity Agreements

Negotiations for a new international grains agreement should be resumed promptly. Farmers Union recommends that a new grains agreement should provide for:

1. All trade in grains be conducted within a price range of 90 to 110 percent of parity.

2. World reserves of grains to be maintained as a responsibility of both exporting and importing countries.

3. An improved "Food Aid Convention" to be supported by both importing and exporting countries, with the aim of providing for emergencies, promoting economic and market development, and generating employment for the world's hungry.

4. Equitable sharing among both exporting and importing countries of the responsibility for and the cost of reserve stocks and food aid, and adjusting market supplies in order to maintain prices within the desired range.

We recommend that international commodity agreements be considered for other agricultural products which are widely traded in international commerce and that the central purpose be to assure prices that are remunerative to raw materials producers and fair to consumers.

C. Policies Toward Developing Nations

We urge the use of the economic strength of the United States, in cooperation with other nations, to promote the economic development of the less developed nations.

We do not favor unilateral intervention by the United States in the affairs of other nations. We are particularly fearful that our current Latin American policy may result in another Vietnam debacle.

1. AID

The authority and purposes of the Agency for International Development (AID) should be revised in order to expedite the promotion of two-way trade between the developing nations and the United States, including the exchange of United States foodstuffs for goods, services, and investments in the developing countries. AID should make maximum use of the expertise and assistance of United States farmers' organizations and cooperatives in its rural development efforts.

2. ACDI

We support the programs of the Agricultural Cooperative Development International (ACDI) for agricultural cooperative and credit development and farm leadership training in the developing world. We urge greater emphasis in the United States economic aid programs on development of farmer cooperatives.

3. Peace Corps

We support continuation of the United States Peace Corps and urge its eventual integration into a United Nations volunteer corps.

4. CARE

Food donation programs conducted by the Cooperative for American Relief Everywhere, Inc. (CARE) and other voluntary relief agencies and the United Nations should continue to stress improved nutrition for children and other highly vulnerable groups.

Farmers Union is proud to have been one of the founding members of CARE and we commend its program of training and technical assistance to local community groups in developing countries in organizing cooperatives.

D. Access to World Markets

Farmers need and deserve to be assured that they will have the right to sell their products in world markets if they are to maintain their productive capacity to serve the world market. Farmers are concerned that there have been six stoppages of United States farm exports by government action during the past sixteen years, and that the power to restrict exports is institutionalized in the Export Administration Act.

We call for an immediate end to the Soviet Union grain embargo, unless a complete trade, technology, [illegible], and service embargo is implemented.

We recommend amendment of the Commodity Credit Corporation (CCC) charter to provide for establishment of a grain marketing board elected by grain producers to negotiate and transact export sales of grain produced in the United States.

This national agency shall be the exclusive contracting agency for the sales and pricing of all agricultural commodities that are imported or exported, and shall give preference to farmers' cooperatives in selecting agents of the board for handling export sales.

E. Reciprocal Trade

The granting of any foreign economic aid or technical and military assistance by our government should be contingent upon agreement by recipient nations, when conditions permit, to offset at a minimum, the equivalent dollar value of aid received through purchases of United States agricultural products. As developing nations increase their ability to make purchases of agricultural goods, they should be obligated to make such purchases from United States sources as a condition for continuing as a beneficiary of any United States aid or assistance program.

F. International Agricultural Cooperation

We appreciate the services and leadership of the International Federation of Agricultural Producers (IFAP) in facilitating the exchange of ideas, techniques, and information among leaders of national farmers' unions throughout the world. We urge broadening of Farmers Union's participation in IFAP and suggest immediate steps to explore with other farm groups and cooperatives in other countries the opportunities for commercial cooperation in international trade.

G. Farmer and Farm Youth Exchange Program

Since a better understanding of agriculture and trade can help promote a more peaceful and prosperous world, we believe that exchanges of farmers, farm leaders, and farm youth should be encouraged. Substantial P.L. 480 (Food for Peace) funds exist in some developing countries and could appropriately be used for these exchange visits.

H. International Women's Decade

We urge the Farmers Union to continue to encourage its members to participate in appropriate activities carried on as part of the 1975-1985 United Nations Decade for Women to secure more equitable economic and social recognition of the contributions of farm women in this country and around the world as working members of farm families.

I. International Interdependence

The realities of the present world situation urge forcefully for a renewed commitment by the United States and other countries to the principles and practices of international cooperation for resolving conflicts, promoting order and civility in the world community, and advancing welfare and equity for all the world's people. The Farmers Union has supported the United Nations and its agencies for these purposes, and we urge that United States policy be strengthened to provide greater support to the United Nations in pursuing these goals.

Adopted by Delegates to
the 79th Annual Convention

Orlando, Florida
March 1-4, 1981

ATTACHMENT "B" - 1

HOW NATIONAL FARMERS UNION VIEWS HUMANITARIAN AND ECONOMIC OPPORTUNITIES IN A REVITALIZED FOOD FOR PEACE PROGRAM

In its testimony to the Agricultural committee of the Congress in March, our organization emphasized the importance of revitalizing the Food for Peace program, stressing humanitarian, economic development and farm market development objectives.

We urged that even if U.S. food stocks become tight, a part of these food resources should still be earmarked for aid to food-deficit nations. If we ignore famine and hunger in the needy countries, we may well destabilize these societies and make them vulnerable to totalitarian penetration.

We have an enlightened self-interest in this activity. "Casting bread upon the waters" has not only helped the needy but has earned us some important trading partners as these nations emerged into viable economic situations.

The U.S. now has eleven farm export markets topping $1 billion a year. Seven of these markets are former recipients of Food for Peace assistance:

U.S. FARM EXPORT TOTALS, 1980

Nation	Dollar Value of Exports (in Billions)
Japan	$6.1*
Netherlands	3.4 (includes some re-exports)
Mexico....................	2.4*
China	2.2
Canada....................	1.85
W. Germany................	1.82*
South Korea..............	1.80*
Spain.....................	1.12 *
Taiwan....................	1.09*
Italy.....................	1.09*
USSR......................	1.04

* Former Recipients of P.L. 480 assistance.

ATTACHMENT "B" - 2

Looking at the Food for Peace "graduates" in more detail, it can be seen that:

* Our ten best customers for nonfat dry milk,

* Our ten best customers for grain sorghum,

* Eight of our ten best customers for wheat, cotton and rice,

* Seven of our ten best customers for feed grains and soybeans,

are former recipients of Food for Peace program assistance.

The developing countries of the world are major trading partners of the United States.

In the four-year period, 1977 through 1980, U.S. farm exports have had a total value of $125.3 billion. Of this total $66.4 billion, or 53%, have gone to the developing countries.

But while we rely on the emerging countries for a major part of our farm export sales, we depend upon them as well as a major source of our imports of essential minerals and products. Petroleum, of course, is one of these essential resources. The U.S. gets these percentages of our supplies of strategic materials from developing nations:

Graphite	- 100%
Rubber	- 100%
Strontium	- 99%
Tin	- 95%
Bauxite	- 88%
Zinc	- 79%
Cobalt	- 75%
Beryllium	- 70%
Copper	- 60%
Tungsten	- 56%
Silver	- 53%
Lead	- 51%

ATTACHMENT "C" - 1

CHRONOLOGY OF FEDERAL GOVERNMENT INTERFERENCE WITH U.S. FARM EXPORTS 1966-1981

MARCH 7, 1966 --- The Department of Commerce, with the concurrence of the Department of Agriculture, imposed a validated license requirement on shipments of cattle hides, calf and kip skins and specified types of bovine leathers.

In approving the Commerce Department fiscal 1967 appropriations, Congress added Section 304 which provided that "no part of any appropriation contained in this title shall be used for the enforcement of any export control order on cattle hides, calf and kip skins and bovine leathers."

On November 7, 1966, the Secretary of Commerce lifted the controls.

JULY 16, 1972 --- The Department of Commerce established export quotas on U.S. cattle hides, limiting them to no more than 109% of the prior year's exports. In extending the Export Administration Act of 1969, due to expire August 1, 1972, Congress added a requirement that future controls on exports of animal hides and skins must have prior approval by the Secretary of Agriculture. Further, it directed that approval cannot be given by the Secretary of Agriculture at any time the supply of cattle hides are determined to be in excess of the requirements of the domestic economy.

Congress also added a provision terminating any restriction imposed on export of agricultural commodities established after July 1, 1972.

On August 29, 1972, the cattle hide export controls were lifted.

JUNE 27, 1973 --- The Secretary of Commerce, with the concurrence of Secretary of Agriculture Earl Butz, imposed an embargo on the export of U.S. soybeans, cottonseeds, and their products, due to short supply considerations.

On July 2, 1973, the embargo was replaced with a licensing system for agricultural exports covering soybeans, cottonseeds and 43 related oil and meal products.

On September 21, 1973, the Department of Commerce revoked the export licensing system.

OCTOBER 4, 1974 --- President Ford asked Cook and Continental grain firms to voluntarily void export contracts for sale of 2.3 million tons of corn and .9 million tons of wheat to the USSR.

Early in the month, the Department of Agriculture announced a prior-approval system for export sales of wheat, corn, soybeans, soybean meal, soybean oil-cakes, grain sorghum, barley and oats.

On October 19, 1974, Treasury Secretary William Simon announced that the USSR had agreed to limit its imports to 1 million tons of corn and 1.2 million tons of wheat.

On March 6, 1975, Secretary Butz terminated the prior-approval system for export sales of grain.

JULY 24, 1975 --- USDA asked export firms to notify it before making major grain sales to the USSR. This was followed on August 11, 1975, with an order for U.S. grain companies to withhold further sales to Russia until U.S. crop prospects were better known.

On September 4, 1975, Secretary Butz said that no further grain sales to Russia would be made until the maritime union boycott was settled.

On October 20, 1975, President Ford ended the embargo and announced that a five-year grain trade agreement had been reached with the Soviet Union, for the period 1976 through 1981. During the period of the pact, the USSR could buy up to 8 million tons of grain but would have to obtain U.S. government approval for larger purchases in any year.

SEPTEMBER 10, 1975 --- The U.S. State Department requested Poland to stop buying U.S. grain. Rolinplex, the Polish grain-buying agency complied the next day. In effect, the grain sales had been suspended pending the negotiation of the Russian grain agreement.

On October 10, 1975, President Ford lifted the embargo on grain sales to Poland, citing record U.S. corn and wheat harvests.

On November 27, 1975, a five-year grain agreement between the U.S. and Poland was signed.

SEPTEMER 27, 1977 --- Congress approved and the President signed into law the Food and Agriculture Act of 1977 (P.L. 95-113), containing Section 1002, a provision which directed that if the executive branch of the federal government causes to be suspended the export of wheat, corn, sorghum, soybeans, oats, rice, rye, barley, flaxseed and cotton, based upon a determination of short supply, the support on such supported commodity must on the same day be lifted to 90% of parity and kept there as long as the suspension continues.

SEPTEMBER 29, 1979 --- Congress approved and the President signed the Export Administration Act of 1979, which in Section 3 (11) declared it to be the "policy of the U.S. to minimize restrictions on the export od agricultural commodities and products.

Section 7 (g) provided that short supply controls could not be imposed on agricultural exports except with the approval of the Secretary of Agriculture and the Secretary could not grant such approval if supplies were in excess of domestic needs.

Section 7 (g)(3) also gave Congress a veto power over Presidential declarations embargoing farm exports.

AUGUST 1, 1979 --- USDA announced that in the fourth year of the US/USSR grain agreement, Russia would be limited to purchase of 8 million tons of wheat and 5 million tons of corn.

The question was raised by the General Accounting Office (GAO) whether this limitation constituted a "suspension" of exports under Section 1002 of the Food and Agriculture Act of 1977. No definitive ruling had been made by October 3, 1979, when USDA announced that the USSR could buy up to 25 million tons of grain in the fourth year of the agreement.

ATTACHMENT "C" - 4

January 4, 1980 --- President Carter suspended all agricultural trade with the Soviet Union in excess of the 8 million tons which the U.S. was committed to sell under the five-year grain agreement. Export licenses for all agricultural products to the Soviet Union, other than the basic 8 million tons, were suspended January 7, 1980.

On April 30, 1980, President Carter announced that the USSR would be allowed to purchase up to 8 million tons of grain during the fifth year of the agreement.

On June 20, 1980, President Carter modified U.S. trade restrictions to allow U.S. grain corporations to sell non-U.S. grain to the Soviet Union.

On January 9, 1981, President Carter could have allowed the grain embargo to expire (under a provision of the Export Administration Act of 1979, Section 6 (a)(2), which says that export controls maintained for foreign policy purposes shall expire one year after imposition unless extended by the President for a period of not more than one year.) On January 2, 1981, Carter extended the embargo.

On April 24, 1981, President Reagan terminated the embargo.

August 5, 1981 --- Reagan Administration entered into a sales agreement with New Zealand, selling U.S. butter for well under the world market price, while giving the New Zealand Dairy Board veto authority over surplus CCC butter export sales for a full year.

Chairman **Gibbons**. I guess the basic problem I have with your position, and I appreciate your criticism of what has gone on, is if we enter into international commodity agreements on the products we produce, obviously other people are going to enter into international commodity agreements for the products they produce and then eventually the commodity producers, whether it be food or other producers, will be in the same kind of position. They will be on top and all the rest of us will just be paying higher prices. Then we will be forced to organize to protect ourselves in this kind of world.

Where does all this end?

Mr. **Sacia**. Well, just to give you a small example of the position that we find ourselves in now, as far as wheat sales abroad, it costs the farmer about $5.20 to produce a bushel of wheat. That same bushel is being sold on the export market for about $3.80.

Chairman **Gibbons**. Well, why does he sell it then? Why does he produce it?

Mr. **Sacia**. Well, that is a good question.

Chairman **Gibbons**. If it costs that much to produce it, why in the world does he produce it if he can only sell it for $3.80? Why does he produce it at all?

That is like losing money wholesale.

Mr. **Sacia**. Well, the farmer has no option. He is chasing his tail. He is trying to produce himself out of this situation that he is in right now.

Chairman **Gibbons**. I think it costs him and I have never been able to understand your argument of why the farmer produces anything if he gets less for it than it costs to produce it.

Why does he continue producing? Why does he not just go to Florida and stay there and go on public assistance? Honestly, I don't believe you. I really don't believe that it costs as much to produce the product as you say it does year after year after year.

I can't see how that can happen. I have been in Congress 20 years and none of the 20 years that I have been here have farmers made any money. Yet they continue on in business. So go ahead, explain to me how your system works.

Mr. **Sacia**. Well, the figures that I gave you, sir, are correct and they are verified by the USDA. The problem has been that this administration and previous administration's have offered as a panacea to farmers' problems increased exports. And in a way farmers have been chasing their tails and they have been producing too much as far as in relation to the price that they are getting.

I would agree with you there but that has been the solution that has been offered to farmers and their income in relation to their debt is an indication that maybe the route that they have been pursuing has not been good.

Their profits have been going down. Their debt has been increasing in a burgeoning way. I guess that is my only response to you, sir.

Chairman **Gibbons**. Do other members have questions?

Mr. **Frenzel**. I was, I guess, not surprised by the testimony but a little disappointed. On page 2 where you are talking about a world international grains agreement, I take it you just intend to set up a grain OPEC and force the rest of the world to pay your cost of production or somebody's cost of production which may, indeed, be higher or lower than the U.S. cost of production; is that correct?

Mr. **Sacia**. That is not really true at all.

As far as OPEC is concerned, they, I believe from 1976 to 1980, increased the cost of their oil from $6 to about $36 or $38. This is nothing that we have in mind at all. We would like to see maybe a 10-cent increase in a bushel of wheat on the export market and it is not to control or have leverage over the rest of the world.

It is to bring order into the market system.

Mr. **Frenzel**. That is what everybody who wants protection says. They want a little order and balance in the system.

Mr. **Sacia**. Every other country in the world works to their government entity as a major part of their trading apparatus. This is the only country that does not.

As we get it stuck to us we put our hands down and act defenseless as if to say if we continue our posture the rest of the world will come around.

Mr. **Frenzel**. You use on page 2 the term "bargain price" and on page 3 "clearance price."

Do I take it that you believe that there is something wrong with world market prices?

Mr. **Sacia**. Yes, sir; I do.

Mr. **Frenzel**. Are you aware that we sell at lower prices than other countries?

I believe your complaint has been the opposite.

Mr. **Sacia**. My complaint is that the price is too low.

Mr. **Frenzel**. Every businessman complains that the prices are too low. Is somebody else selling at a higher price?

Mr. **Sacia**. We are establishing the world market price for such commodities as wheat because we control over 50 percent of the wheat export need in the world.

Mr. **Frenzel**. We did not control the world market price when we set the embargo, did we?

That is the only time I know of that we sold our wheat more cheaply than the rest of the world because our wheat was restricted.

Mr. **Sacia**. The reason that other countries are not selling the wheat for much higher than we are is because they have to compete with us as far as access to world markets. They don't want to hurt themselves in that way.

Mr. **Frenzel**. The other part of your testimony that bothers me in addition to rigging markets is that you are apparently going to trade off U.S. consumers for a higher price abroad.

You are going to ask us to get into other commodity agreements so U.S. consumers can pay more money for such commodities as cocoa and coffee and sugar, I suppose, and other things, and then that is going to make a deal so that consumers will pay higher prices than world market prices for our stuff.

Is that the suggestion?

Mr. **Sacia**. Well, we don't believe it is a tradeoff. We believe that it is a complex system for all where we are all interdependently tied.

It is like a spider web. We all have to attempt to seek some sort of coordination, every country in the world. We are not trying to gouge each other. We just want some order. That is all we are asking, sir.

Mr. FRENZEL. I notice you say that there is no free market, it is manipulated by multinational trading companies. So they are setting prices, not the world market?

Mr. SACIA. That is basically correct.

Mr. FRENZEL. Why don't you sell your products abroad if you don't like the people who are selling them there? I must say, you can sell to Japanese companies, American companies, the Swiss companies, Argentine companies, French companies, but you can't find any you like. They are all crooked?

Mr. SACIA. We are not saying they are crooked, sir. We are just saying that they have a real interest in keeping prices as low as possible because they are interested in volume and access to the market.

We don't have any sort of conspiratorial approach to this as you seem to be implying. We just realize where their interest is and where the interests of farmers are.

Chairman GIBBONS. Let's go back to basics, if you don't mind me interrupting here.

Mr. FRENZEL. I would be delighted.

Chairman GIBBONS. Would the National Farmers Union accept a controlled price of land in the United States, farmland?

Mr. SACIA. No.

Chairman GIBBONS. Well, you are just contradicting yourself. The basic commodity is land and you want to be able to increase the price through a cartel of everything you raise on that land but you don't want the price of the land controlled.

It has been my observation that every time the price of oranges goes up in Florida the price of an orange grove goes up also and so what you are really seeking to do is to make a windfall out of the land you own. You want to control prices in the marketplace but you are not willing to accept controls yourself.

You know, everybody has been trying to beat the market for 6,000 years and nobody has figured out a way to beat it without giving up a great deal of other freedoms that we all enjoy.

Basically, the farmer wants to control the price of his product up but he is not willing to control the price of the asset by which he produces it up.

You are just asking us to allow you to establish a cartel. It is going to increase the price of everything that American's consume if you lead it to a logical conclusion. And the whole struggle of mankind since we have been on Earth is to try to reduce the cost of living. You are trying to run water uphill.

Mr. SACIA. We are asking for the cost of production. That is all we are asking, sir.

Chairman GIBBONS. If you don't like the cost, you don't need to produce it. Nobody forces you to produce it.

Mr. SACIA. Well, you are losing farmers, sir.

Chairman GIBBONS. I am sorry about losing farmers but people don't have to farm if they don't want to.

Mr. **Sacia**. That is exactly right. Less than 2 percent of the population is farming. We are losing 1,000 farmers every week. In 5 years time we lost as much land as all the farmland in Indiana, lost it to agriculture.

Chairman **Gibbons**. And eventually we will get down to some kind of equilibrium. We could follow the procedure that the Japanese and Europeans have followed.

Mr. **Sacia**. Is losing farmland establishing equilibrium? Is that something that we should be pursuing?

Chairman **Gibbons**. If it is not profitable to use it, why use it? Why just exhaust it?

Mr. **Sacia**. Because there are people to feed.

Mr. **Frenzel**. At what price?

Chairman **Gibbons**. You are not going to feed any more people by raising the prices.

Mr. **Sacia**. We are going to feed more people by keeping farmers in business by giving them something resembling a profit in their livelihood.

Mr. **Frenzel**. You could do it like the Europeans, I suppose, and have the taxpayers feed the people. That will make some more surpluses, I suppose.

Chairman **Gibbons**. The highest food prices in the world you find in Europe and in Japan. I am afraid I don't want to follow their model.

Mr. Bailey.

Mr. **Bailey**. Mr. Chairman, I would like to comment on the colloquy here. I think I agree with some of the points that you have made. You are talking about an issue of economic efficiency. There are a lot of social goals, by the way.

I was raised part of my life on a small farm. We raised our own pigs and chickens and our heifers. We went out and bought our heifers and raised them and butchered them. I cleaned many a chicken coop and the whole thing. It was good for me as long as I could hold my breath and run out before I took another hoe shot at the roost.

The truth—in fact, I think is there are a lot of questions raised about the efficiency of agriculture that sometimes really don't go to the crux of the problem. Because with genetic work and everything else it is quite possible that you are going to see less land worldwide.

You are going to see that inefficient agriculture worldwide putting more and more lands that are now marginal into some soil bank or that are not going to be used and I think you are going to have to face that.

I don't know if you folks do it the best way. Up in Pennsylvania we had more small family farms than any other State in the Union. I don't know if we still do but we did at one time. That land is lying fallow all over the place now.

We are into agribusiness. Guys are buying the big internationals and turning over 1,200 acres a year. That is the only way they can stay in business, buying, with very efficient machinery and that sort of thing.

Along those lines, on the governmental role, what has your view been on the balanced budget. I read the literature some of you folks send out and I have attended some of your meetings and listened to some of the awfully strong words, by the way. Sometimes it seems hypocritical you are asking for a government role and policy, on the other hand, that seems rather contradictory.

I want to know how you feel about the balanced budget issue?

Mr. SACIA. We feel strongly that a balanced budget is a good thing.

Mr. BAILEY. I know. I remember how strongly you felt about that.

Mr. SACIA. We believe that we had come much closer to achieving a balanced budget if we received something closer to what is achievable as far as food exports are concerned.

Mr. BAILEY. Well, let me ask you this. I don't know if it came up here but the chairman has been asking questions that have been intriguing me. He asked about subsidized things like rice, for example.

Do you have a policy on that?

Could I get the chairman's attention on one issue, please?

Chairman GIBBONS. Oh, yes, sir. I am sorry.

Mr. BAILEY. The chairman has raised a question a number of times that had caught my attention at a few meetings we have had on rice subsidization. Apparently there is more subsidization and we are actually depriving other countries if we are talking about efficiency, other countries have markets and it causes you a problem with them in that Asian area, for example.

Could you comment on what your policy is on those things? I am curious as to what the chairman's opinion is.

Mr. SACIA. Are you talking about farm programs for different commodities?

Mr. BAILEY. I don't know enough about it. Certain products are subsidized more than what we would call normal subsidy of programs.

Mr. SACIA. Well, you are getting into an awfully wide area here but we have been pretty supportive of farm programs that would seek to stabilize the farm economy a little bit. And there is a long history to it but up through the 1930's there are great fluctuations in the prices received by farmers and it meant that a lot of farmers would be driven out of certian areas and there is a lot of instability. So since the 1930's we have been supportive of moderate farm programs that would just stablilize things a little bit.

Mr. BAILEY. Well, if it is true that we have a program that subsidizes the production and/or export and supply of rice, let's say, more so than another crop, you would be for eliminating that?

Mr. SACIA. We would be for a balance so that one commodity would not be supported more than another or in relation to its——

Mr. BAILEY. Do you subsidize rice now more than you do wheat?

Mr. SACIA. I don't believe we do, no.

Mr. BAILEY. I think there is a subsidization issue. I am one of the loudest mouths in this whole darn Congress on this issue, foreign subsidization.

I have never been hostile to farm programs. I have been very, very supportive, believe me, and I hope I will continue to be. And I know it is unique, just like my industrial issues are unique, but in some of these cases we are getting a lot of complaints from foreign people who throw right back in our face that fact that we are subsidizing more in certain areas than in others. And I think the agricultural area is one we need to take a look at. That is a personal opinion and a very uninformed one, by the way.

Thank you, Mr. Chairman.

Chairman GIBBONS. This concludes our hearings for today. We will resume at 12 noon on Monday in this same room. Copies of the revised witness list for Monday are on the press table.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned, to reconvene at 12 noon, Monday, December 14, 1981.]

U.S. TRADE POLICY

MONDAY, DECEMBER 14, 1981

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, D.C.

The subcommittee met at 12 noon, pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman **Gibbons**. Mr. Shelley Appleton, you are our first witness as we begin the third day of our hearings in which we take into consideration the views of the private sector on U.S. trade policy. We will put all of the statements in the public hearing record at the appropriate point in their entirety. Witnesses may either read from them, summarize them, or proceed as they wish. We are happy to have you, sir.

STATEMENT OF SHELLEY APPLETON, SECRETARY-TREASURER, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL–CIO, ON BEHALF OF THE TEXTILE/APPAREL IMPORT STEERING GROUP, ACCOMPANIED BY BUFORD BRANDIS, SENIOR INTERNATIONAL ADVISER, AMERICAN TEXTILE MANUFACTURERS INSTITUTE

Mr. **Appleton**. Thank you, Mr. Chairman. I am accompanied by Dr. Buford Brandis, the senior international adviser to the American Textile Manufacturers Institute. The fact that he is here with me I think illustrates the kind of testimony this is.

I am, as you know, the secretary-treasurer of the International Ladies' Garment Workers' Union, but I am not here in that capacity. I am here representing a unique coalition of 20 employer and worker groups in the textile, clothing, and apparel industries that have been deeply injured by the inflow of cotton, wool, and manmade fiber products into the United States in the last decade. And the testimony I am about to present is on their behalf collectively. I think normally I would summarize it, Mr. Chairman, but I think the testimony is important enough and the situation is desperate enough, so that I would wish to put the entire statement into the record by reading it.

Chairman **Gibbons**. All right, sir, you go right ahead.

Mr. **Appleton**. The fiber/textile/apparel industry employs some 2½ million workers across the entire United States. These workers' jobs are being threatened by the rapid growth in textile and apparel imports into this country. Imports of these goods have increased by about 7 percent annually over the past decade and thus far in 1981 are up 14 percent over last year. I might add that those figures have been revised recently. I do not know exactly how much, but they are up considerably more than 14 percent over 1981. All of this has happened while the U.S. market had minimal growth.

By way of background, I believe it is important to realize that U.S. trade policy has actively supported the concept of orderly trade in textiles and apparel since the 1930's. It was, however, only after the Second World War that the U.S. Government came fully to grips with the problems which can be caused by international trade flows in textiles and apparel. In the 1950's the Eisenhower administration negotiated a voluntary restraint agreement with Japan on cotton textiles and apparel. It was not until 1961 that the first internationally recognized agreement on textile and apparel trade was negotiated under the GATT—the general agreement on tariffs and trade—the short-term arrangement on cotton textile trade [STA]. This was succeeded a year later by the long-term arrangement [LTA]. In 1971, the United States concluded multifiber bilaterals with Japan, Hong Kong, South Korea, and Taiwan. In 1973 the long-term arrangement was succeeded by the multifiber arrangement [MFA] covering cotton, wool, and manmade fiber textiles and apparel. This arrangement, negotiated in 1973, was valid for 4 years and was renewed in 1977 with a protocol which permitted "reasonable departures" from its terms.

Currently, negotiations are under way in Geneva for its renewal before the arrangement expires on December 31 of this year, this month.

We would like to address our remarks to this instrument and what it means to the fiber/textile/apparel industry in the United States and how we believe it can be made more useful and workable.

As originally conceived, the multifiber arrangement would provide orderly growth of the exports of textiles and apparel of the truly developing countries into developed country markets without causing market disruption. This orderly growth would promote an investment climate in the developed countries which would provide their industries with incentives to increase productivity by installing new plants and equipment so that they might remain competitive and thus preserve badly needed domestic jobs. The U.S. textile industry has done its part by reinvesting some 82 percent of its retained cash flow and increasing productivity by 4 percent annually over the last decade. The apparel industry has been racking up large gains in new equipment and productivity as well.

The problem now is that imports under the MFA are growing at rates far in excess of market growth rates. In its original form, the MFA provided for a minimum 6-percent annual growth of quotas. In 1973 when this rate was agreed to, textile and apparel consumption in the developed countries was growing much faster than it is today. The oil crisis had not yet occurred and overall economic growth was forecast to be much higher than was to be the case. However, what occurred was a slowdown in consumption of textile products between 1973 and today. U.S. per capita consumption was a record 60 pounds in 1973; today it is about 55 pounds. Moreover, even the most optimistic projections are for U.S. market growth of no more than 1.5 percent annually over the next decade. It becomes obvious that the U.S. market is not a potential source of high consumption growth any longer. High growth markets of the future lie elsewhere than in the United States.

Yet in the U.S. market throughout the 1970's, imports of apparel grew at about 8 percent per year. Current import levels represent 600,000 jobs—or one-fourth as many as there are in the domestic industry today. Econometric studies show that if present trends continue, by 1990 some 600,000 employees will be out of jobs in textiles and apparel than if import growth were kept to market growth. We can ill afford to export more jobs to low-wage countries. Now some people may say that this is a natural and even desired consequence of the dynamics of free trade and open markets. These people may say that everyone is better off, that overall welfare has increased, and that consumers will reap the benefits of cheaper goods.

I would like to make several points in response to these often heard claims. Will the displaced workers be better off? You should consider that the work force is predominantly women, predominantly minorities, and in apparel manufacturing is predominantly located in urban, inner-city areas. These workers are often the sole support of their families and are unable to move easily to other locations with better job opportunities. It is difficult to make a judgment in the abstract that these workers will be shifted to higher, more productive employment.

I would like to call to your attention some numbers which I believe will highlight this problem. In New York City between 1970 and 1979 the textile/apparel work force, the largest single manufacturing industry in the city, shrunk by 61,000 workers. During the same time unemployed in New York City increased by 105,000. Now I am not saying that everyone who left the textile/apparel industry went on the unemployment rolls, but I am saying that there is probably very little opportunity for other employment for people who are displaced from this industry in our major cities. Textile/apparel workers in New York City and in other cities are already part of a free enterprise zone which the present administration talks about creating in our inner cities. The 91,000 employees in Los Angeles, the 21,000 in Miami, the 32,000 in Philadelphia, are already employed in an industry providing entry-level employment in an area where the only alternative may be welfare.

Moreover, will the consumer really benefit if there are more imports? It is our experience that the textile/apparel industry has not been a major contributor to inflation in this country. The Bureau of Labor Statistics apparel price index has consistently increased at about half the rate of the Consumer Price Index. Clearly this industry, with its 18,000 apparel firms and 5,000 textile companies and its high level of competition, is not an important contributor to inflation.

However, there is another reason for doubting that the consumer will reap much benefit if imports are allowed to take over greater and greater portions of this market. The markup practices by retailers seem to insure that there will be little benefit at all accruing to the consumer. Court records in a recent litigation show that a U.S. retailer bought sweaters in China at $5, planning to sell them in U.S. department stores at up to $24. A recent Wall Street

Journal article of September 25 this year reported that in spite of lower import prices, caused by appreciation of the U.S. dollar, these price decreases are seldom passed to consumers. The article quotes Mr. J. Hart Lyon, a vice president of Carter Hawley Hale, one of the bigger department store chains in the United States, as saying, and I quote, "I can tell you flat out that import prices aren't going to come down." Mr. Lyon was cited as adding that price decreases enjoyed by importers and retailers will not be passed along to the consumer because, and again I quote, "This is a margin opportunity for both importers and retailers." Thus, we believe there is little reason to expect a more liberalized import system into the United States will lead to many increased benefits to anyone except perhaps importers and retailers. Further, with textile products being one of our basic needs it does not make sound economic sense to rely heavily on foreign suppliers as sources of this essential item. Ponder for a moment what the consumer might have to pay if foreign countries controlled our supply of textiles and apparel for military and civilian use.

We do believe that a workable, strengthened MFA will provide net benefits to our economy and to the whole world's trading system. Some 50 countries now participate in the MFA and all of those countries have grown to recognize its value. It is important to recognize the uniqueness of the textile and apparel industries worldwide. Every country, as it moves up the development scale, builds a textile or apparel industry and begins looking for export markets. It is an easy task for practically any developing country to put tremendous quantities of low-cost apparel into international trade channels very quickly. Consider the People's Republic of China, which in the space of 5 years has gone from supplying practically no textiles and apparel to this market to becoming our No. 4 supplier, and in 1981 will probably ship to the United States almost a half billion yards of textiles and apparel, and yet China severely rations cotton textiles for its own domestic population. Or consider the case of Mauritius, a tiny island in the Indian Ocean, which in the space of less than 2 years has become a major supplier of knitted wool sweaters to the United States.

The general agreement on tariffs and trade, the GATT, which has served the international trading community since 1947 as an instrument aimed at reducing barriers to trade, has recognized the special problems in textile and apparel trade. By sanctioning the MFA, the GATT is aware of the great potential for disruptive trade flows which could lead inevitably to retaliation and increased protectionism by importing countries. The MFA was established for the purposes I stated earlier, and in its operation works to prevent additional protectionism from pervading the world's trading system.

The organizations which I represent before you today are seeking an MFA which will provide the recognition that import growth as called for in the original MFA is unrealistic in a time when domestic markets are stagnant. Specifically, what we are seeking in the renewal negotiations is:

First, to look at imports globally, that is, to permit both regional and global quotas.

Second, to relate import growth to conditions in the domestic market, rather than requiring the present 6-percent increase in quotas per annum.

Third, to eliminate the flexibility provisions of the MFA which permit over and above the usual 6-percent quota growth, as much as a 13-percent increase in trade from one year to another even if the quota was completely filled in the previous year. These provisions also permit an even higher trade growth if the quotas were not completely filled previously.

Fourth, special recognition that in some very sensitive, highly impacted import categories shipments can be reduced to lower levels.

These measures, we believe, will make the MFA a workable instrument provided that all of its provisions are fully implemented and enforced. We believe all participants will be well served if the MFA can become a better instrument.

However, in September at the MFA negotiations in Geneva the administration proposed an MFA approach which falls far short of the position advocated by our coalition. The United States has proposed to leave the basic MFA instrument unchanged and to deal with any problems outside the scope of the MFA through a side agreement, or protocol. The protocol proposed by the United States allows importing countries in exceptional circumstances to restrain imports from major suppliers more severely than would otherwise be the case under the MFA, but limits these more severe restraints to quota growth rather than actual import growth. The administration indicated that it has precluded any rollbacks in quota levels, let alone trade levels, and is focusing on only a few major suppliers. This limited approach cannot under the present conditions of trade succeed in decreasing import growth to the 1.5 percent growth rate projected for the U.S. market. Let me repeat that, Mr. Chairman. There is no way that this procedure which the administration earlier intimated it would follow in renegotiating this could possibly reduce the growth level to the 1½ percent which is so desperately needed in order to protect what is left of this industry, an essential industry in this country, for the balance of this century.

As you probably know, President Reagan in a campaign letter to Senator Thurmond stated that he supported a strengthened MFA, and I quote, "relating import growth from all sources to domestic market growth." We do not understand how this commitment can be met with the approach presently being pursued by the administration. However, on December 11 Presidential Assistant James A. Baker III wrote the following to Senator Thurmond and Carroll Campbell of South Carolina in followup to our recent conversations:

> I want to emphasize the importance that President Reagan attaches to the textile import question. In this regard and in view of the current situation on the domestic market the President has instructed the U.S. negotiators in Geneva to strengthen the U.S. proposal presented in Geneva on the renewal of the MFA. This administration will make every effort to satisfactorily conclude a MFA to allow us to relate total import growth to the growth of the domestic textile and import market. The President has authorized me to work to see that we achieve that goal.

We trust this Presidential action will produce a new and strengthened MFA. The time has come to acknowledge that the economic consequences of this low growth of our market cannot be borne solely by U.S. textile and apparel workers. We want a renewed MFA, but not at any cost, not if it permits imports to grow at the expense of our industry. In that case we would be forced to seek any legislation needed to authorize U.S. quota action whether unilateral or bilateral.

That concludes my testimony. Thank you.

[The prepared statement follows:]

STATEMENT OF SHELLEY APPLETON, SECRETARY-TREASURER, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

My name is Shelley Appleton. I am secretary-treasurer of the International Ladies' Garment Workers' Union, AFL-CIO. I am appearing before your Committee as a spokesman for the Textile/Apparel Import Steering Group, 20 trade associations and labor organizations which make up the fiber/textile/apparel industry complex in the United States. I respectively request that the list of these organizations, which is attached to my statement, be made part of the transcript of this hearing.

The fiber/textile/apparel industry employs some two and one-half million workers across the entire United States. These workers' jobs are being threatened by the rapid growth in textile and apparel imports into this country. Imports of these goods have increased by about 7 percent annually over the past decade and thus far in 1981 are up 14 percent over last year. All of this has happened while the U.S. market had minimal growth.

By way of background, I believe it is important to realize that U.S. trade policy has actively supported the concept of orderly trade in textiles and apparel since the 1930's. It was, however, only after the Second World War that the U.S. government came fully to grips with the problems which can be caused by international trade flows in textiles and apparel. In the 1950's the Eisenhower Administration negotiated a voluntary restraint agreement with Japan on cotton textiles and apparel. It was not until 1961 that the first internationally recognized agreement on textile and apparel trade was negotiated under the GATT (the General Agreement on Tariffs and Trade): the Short-Term Arrangement on Cotton Textile Trade (STA). This was succeeded a year later by the Long-Term Arrangement (LTA). In 1971, the U.S. concluded multifiber bilaterals with Japan, Hong Kong, South Korea, and Taiwan. IN 1973 the LTA was succeeded by the Multifiber Arrangement (MFA) covering cotton, wool, and man-made fiber textiles and apparel. This Arrangement, negotiated in 1973, was valid for four years and was renewed in 1977 with a protocol which permitted "reasonable departures" from the terms of the MFA.

Currently, negotiations are underway in Geneva for its renewal before the Arrangement expires at the end of 1981.

We would like to address our remarks to this instrument and what it means to the fiber/textile/apparel industry in the United States and how we believe it can be made more useful and workable.

As originally conceived, the Multifiber Arrangement would provide orderly growth of the exports of textiles and apparel of the truly developing countries into developed country markets without causing market disruption. This orderly growth would promote an investment climate in the developed countries which would provide their industries with incentives to increase productivity by installing new plants and equipment so that they might remain competitive and thus preserve badly needed domestic jobs. The U.S. textile industry has done its part by reinvesting some 82 percent of its retained cash flow and increasing productivity by 4 percent annually over the last decade. The apparel industry has been racking up large gains in new equipment and productivity as well.

The problem now is that imports under the MFA are growing at rates far in excess of market growth rates. In its original form, the MFA provided for a minimum six percent annual growth of quotas. In 1973 when this rate was agreed to, textile and apparel consumption in the developed countries was growing much faster than it is today. The oil crisis had not yet occurred and overall economic growth was forecast to be much higher than was to be the case. However, what occurred was a slowdown in consumption of textile products between 1973 and today. U.S. per capita consumption was a record 60 pounds in 1973; today it is about 55 pounds. Moreover, even the most optimistic projections are for U.S. market growth of no more than 1.5 percent annually over the next decade. It becomes obvious that the U.S. market is not a potential source of high consumption growth any longer. High growth markets of the future lie elsewhere.

Yet in the U.S. market throughout the 1970's, imports of apparel grew at about eight percent per year. Current import levels represent 600,000 jobs—or one-fourth as many as there are in the domestic industry today. Econometric studies show that if present trends continue, by 1990 there will be over 500,000 fewer jobs in textiles and apparel than if import growth were kept to market growth. We can ill-afford to export more jobs to low-wage countries. Now some people say that this is a natural and even desired consequence of the dynamics of free trade and open markets. These people may say that everyone is better off, that overall welfare has increased, and that consumers will reap the benefits of cheaper goods.

I would like to make several points in response to these often heard claims. Will the displaced workers be better off? You should consider that the workforce is predominantly women, predominantly minorities, and in apparel manufacturing is predominantly located in urban, inner-city areas. These workers are often the sole support of their families and are unable to move easily to other locations with better job opportunities. It is difficult to make a judgment in the abstract that these workers will be shifted to higher, more productive employment.

I would like to call to your attention some numbers which I believe will highlight this problem. In New York City between 1970 and 1979 the textile/apparel workforce, the largest single manufacturing industry in the city, shrunk by 61,000 workers. During the same time unemployed in New York City increased by 105,000. Now I am not saying that everyone who left the textile/apparel industry went on the unemployment rolls, but I am saying that there is probably very little opportunity for other employment for people who are displaced from this industry in our major cities. Textile/apparel workers in New York City and in other cities are already part of a free enterprise zone which the present Administration talks about creating in our inner cities. The 91,000 employees in Los Angeles, the 21,000 in Miami, the 32,000 in Philadelphia, are already employed in an industry providing entry-level employment in an area where the only alternative may be welfare.

Moreover, will the consumer really benefit if there are more imports? It is our experience that the textile/apparel industry has not been a major contributor to inflation in this country. The Bureau of Labor Statistics apparel price index has consistently increased at about half the rate of the consumer price index. Clearly this industry, with its 18,000 apparel firms and 5,000 textile companies and its high level of competition is not an important contributor to inflation. However, there is another reason for doubting that the consumer will reap much benefit if imports are allowed to take over greater and greater portions of this market. The mark-up practices by retailers seem to insure that there will be little benefit at all accruing to the consumer. Court records in a recent litigation show that a U.S. retailer bought sweaters in China at $5.00, planning to sell them in U.S. department stores at up to $24.00. A recent Wall Street Journal article of September 25 this year reported that in spite of lower import prices caused by appreciation of the U.S. dollar, these prices decreases are seldom passed to consumers. The article quotes Mr. J. Hart Lyon, a vice-president of Carter Hawley Hale, one of the bigger department store chains in the U.S. as saying, and I quote, "I can tell you flat out that import prices aren't going to come down". Mr. Lyon was cited as adding that price decreases enjoyed by importers and retailers will not be passed along to the consumer because, and again I quote, "This is a margin opportunity for both importers and retailers". Thus, we believe there is little reason to expect a more liberalized import system into the U.S. will lead to many increased benefits to anyone except perhaps importers and retailers. Further, with textile products being one of our basic needs it doesn't make sound economic sense to rely heavily on foreign suppliers as sources of this essential item. Ponder for a moment what the consumer might have to pay if foreign countries controlled our supply of textiles and apparel for military and civilian use.

We do believe that a workable, strengthened MFA will provide net benefits to our economy and to the whole world's trading system. Some fifty countries now participate in the MFA and all of those countries have grown to recognize its value. It is important to recognize the uniqueness of the textile and apparel industries worldwide. Every country, as it moves up the development scale, builds a textile or apparel industry and begins looking for export markets. It is an easy task for practically any developing country to put tremendous quantities of low-cost apparel into international trade channels very quickly. Consider the Peoples' Republic of China which in the space of five years has gone from supplying practically no textiles and apparel to this market to becoming our number four supplier and in 1981 will probably ship to the U.S. almost a half a billion yards of textiles and apparel and yet China severely rations cotton textiles for its own domestic population. Or consider the case of Mauritius, a tiny island in the Indian Ocean, which in the space of less than two years has become a major supplier of knitted wool sweaters to the United States.

The General Agreement on Tariffs and Trade, the GATT, which has served the international trading community since 1947 as an instrument aimed at reducing barriers to trade, has recognized the special problems in textile and apparel trade. By sanctioning the MFA, the GATT is aware of the great potential for disruptive trade flows which could lead inevitably to retaliation and increased protectionism by importing countries. The MFA was established for the purposes I stated earlier and in its operation works to prevent additional protectionism from pervading the world's trading system.

The organizations which I represent before you today are seeking an MFA which will provide the recognition that import growth as called for in the original MFA is unrealistic in a time when domestic markets are stagnant. Specifically, what we are seeking in the renewal negotiations is:

1. To look at imports globally, that is, to permit both regional and global quotas.
2. To relate import growth to conditions in the domestic market, rather than requiring the present 6% increase in quotas per annum.
3. To eliminate the flexibility provisions of the MFA which permit over and above the usual 6 percent quota growth, as much as 13 percent increase in trade from one year to another even if the quota was completely filled in the previous year. These provisions also permit an even higher trade growth if the quotas were not completely filled previously.
4. Special recognition that in some very sensitive, highly impacted import categories shipments can be reduced to lower levels.

These measures, we believe, will make the MFA a workable instrument provided that all of its provisions are fully implemented and enforced. We believe all participants will be well served if the MFA can become a better instrument, a side agreement, or protocol. The protocol proposed by the U.S. allows importing countries in exceptional circumstances to restrain imports from major suppliers more severely than would otherwise be the case under the MFA, but limits these more severe restraints to quota growth rather than actual import growth. The Administration indicated that it has precluded any rollbacks in quota levels, let alone trade levels, and is focusing on only a few major suppliers. This limited approach cannot under the present conditions of trade succeed in decreasing import growth to the 1.5 percent growth rate projected for the U.S. market.

As you probably know President Reagan in a campaign letter to Senator Thurmond stated that he supported a strengthened MFA, and I quote, "relating import growth from all sources to domestic market growth". We do not understand how this commitment can be met with the approach presently being pursued by the Administration.

Our primary concern is to produce a renewed and strengthened MFA. We seek a recognition by exporting countries which have prospered under the MFA that the time has come to acknowledge that the economic consequences of the slow growth of our market cannot be borne solely by U.S. textile and apparel workers. We want a renewed MFA, but not at any cost—not if it permits imports to grow at the expense of our industry. In that case we would be forced to seek any legislation needed to authorize U.S. quota actions whether unilateral or bilateral. Thank you.

ANNEX I—LIST OF MEMBER ORGANIZATIONS OF THE TEXTILE/APPAREL IMPORT STEERING GROUP

Amalgamated Clothing & Textile Workers' Union,
American Apparel Manufacturers Association,
American Textile Manufacturers Institute,
American Yarn Spinners Association,
Carpet and Rug Institute,
Clothing Manufacturers Association of U.S.A.,
International Ladies' Garment Workers' Union,
Knitted Textile Association,
Man-Made Fiber Producers Association,
National Association of Hosiery Manufacturers,
National Association of Uniform Manufacturers,
National Cotton Council,
Natonal Knitwear & Sportswear Association,
National Knitwear Manufacturers Association,
National Wool Growers Association,
Neckwear Association of America,

Northern Textile Association,
Textile Distributors Association,
United Hatters, Cap and Millinery Workers' Union,
Work Glove Manufacturers Association.

Mr. **Appleton**. If you would permit me, there is a letter dated November 12 signed by Robert E. Coleman, president, on behalf of the textile import steering groups to you, the Honorable Sam Gibbons, which I would like to place into the record at this time.

Chairman **Gibbons**. Fine.

Mr. **Appleton** [reading]:

> Dear Mr. Chairman: The steering group whose member trade associations and labor unions are listed below voted to oppose H.R. 4761, extending section 124, Trade Act of 1974, tariff-cutting authority. At current tariffs imports are surging and are capturing all the growth in our domestic apparel market. The substantial cuts agreed to in the Tokyo round are yet to come. They are to be phased in over a 6-year period beginning next January. The form and indeed the existence of the MFA quota system beyond this year are matters for speculation. This industry cannot tolerate any more uncertainty.

Thank you very much, Mr. Chairman.

Chairman **Gibbons**. Thank you, sir.

Why is the American textile market not growing any more?

Mr. **Appleton**. I will let Mr. Brandis respond to that question, Mr. Chairman.

Mr. **Brandis**. There are two or three factors at work here, Mr. Chairman. One clearly is the increasing import impact. A second factor at work is the economic situation, which since 1973, as Mr. Appleton pointed out, this 6-percent growth factor was put into MFA in 1973 just prior to the first oil shock, and since that time the total market as measured by pounds of fiber chewed up has been practically level. It has gone up and down a little from year to year, but the growth over the period has really been negative. It is about 55 pounds per capita, as compared to some 60 pounds per capita in 1973.

Chairman **Gibbons**. Is it because America is graying and we are not consuming as much fiber? Is it the dropoff in the birthrate?

Mr. **Brandis**. No. This is a per capita basis that we are talking about.

Chairman **Gibbons**. Yes, sir.

Mr. **Brandis**. Of course the average age of the individual in America's population has aged somewhat over that period of 7 or 8 years. That may be part of the factor involved. However, it is really the teenage group that is the highest per capita consumer of textiles, and that group is a large group during this period of time. The birthrate, of course, has dropped off some, but again, that youngest group is not the major component of the market.

Mr. **Appleton**. I think in the recent period the new strength of the dollar has also contributed to the problem in the textile industry and the apparel industry. I think style changes are a factor, too, Mr. Chairman. I think we are going through a period of transition in style. And I think general economic conditions are a very, very serious factor in the consumption of these products in this country. But I think basically what is involved is that you can draw almost a direct correlation between the damage to our industry and the growth of imports. That is the most important single factor, surely in the apparel industry, and almost as surely in the general textile industry.

Chairman GIBBONS. I notice you said in your statement that apparel and textiles were not causes of inflation. I guess it is pretty hard to blame it on anybody, but one of the problems of maturing and your hair turning gray is you remember what things used to cost so well. I have on a cotton shirt now, and I have been wearing the same kind of cotton shirt for most of my life except for a few experiments in the blends that did not work very well. I remember when I used to buy an Arrow shirt or Manhattan shirt in the finest clothing store in Tampa for $1.50. I came back from World War II and paid $5 for it. That same shirt now costs $40. I do not know, maybe it is better, but I just do not recognize it. I can just remember what it cost.

Mr. APPLETON. Where is it made, Mr. Chairman?

Chairman GIBBONS. It has not got a label in it as being made in Taiwan, so I guess it is made in the United States.

Mr. APPLETON. The cost of the consumer price component for textiles and apparel, though, has gone up only one-half as fast as the consumer prices generally. Some items go up faster than others.

I would like to make a point about there being no benefit to the consumer in allowing more imports. There was a hearing down here at which the president of our union had two brassieres made by an American company. One was made by American workers in the United States, and one was made in Taiwan. The American worker got about $5 an hour, the Taiwanese worker got 35 or 40 cents an hour, and they sold in this country at the same price. They were identical and sold at the same price. The American consumer did not get the benefit of that cheap labor.

I suppose you could make a slightly better case for increasing imports if the consumer got the benefit, but it is still a lousy case in the aggregate. I think this industry would have to be protected in the national interest if for no other reason. I say again you can make a slightly better case if the consumer were getting the protection, but they are not getting the protection.

Chairman GIBBONS. They are not getting the benefit?

Mr. APPLETON. No, no benefit whatsoever. The only ones who benefit are the importers and the retailers. I do not know whether we ought to be going through this agony for the importers and the retailers.

Chairman GIBBONS. I imagine an importer would sell to as many retailers as he could find to buy his products. Why at the retail level is there not a cost differential? It looks to me like there would be some importer or retailer——

Mr. APPLETON. In our industry there may be. The industry is much too large for me to generalize about it completely. But I would say on the whole where we have checked we have found little or no cost differential between imported items and items made domestically.

Chairman GIBBONS. I have urged the administration to get on with the MFA. I know it is a complicated task. We have the Europeans on one side, because we have sent an awful lot of textiles to Europe recently, they are pretty uptight. We have got some of the cheap producing nations uptight, and we have sort of been playing a middleman role. You say the President has now instructed his negotiator to take a tougher stance; is that right?

Mr. APPLETON. Yes, he has, and we are pleased with it. For these purposes we have pocketed all our political differences and we are united, and we are very hopeful that the President and this administration will succeed in controlling this accelerating process.

Chairman GIBBONS. Well, I certainly hope they get the agreement negotiated and get it satisfactory.

Thank you very much.

Mr. APPLETON. We will be coming back to you if they do not, Mr. Chairman.

Chairman GIBBONS. I understand.

Mr. APPLETON. Thank you very much, Mr. Chairman.

Chairman GIBBONS. Thank you.

Our next witness is Mr. Peter V. Handal, president, Victor B. Handal & Bro., Inc., chairman of the American Association of Exporters and Importers, Textile and Apparel Group, accompanied by Mr. Michael P. Daniels. Mr. Daniels is a partner in Daniels, Houlihan & Palmeter here in Washington. Mr. Handal, you may proceed as you wish.

STATEMENT OF PETER V. HANDAL, PRESIDENT, VICTOR B. HANDAL & BRO., INC., AND CHAIRMAN, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, TEXTILE AND APPAREL GROUP, ACCOMPANIED BY MICHAEL P. DANIELS, COUNSEL

Mr. HANDAL. Thank you, Mr. Chairman. Good afternoon. I would like to read just a summary of my testimony and ask that the testimony itself be placed into the record.

Chairman GIBBONS. It will be in its entirety.

Mr. HANDAL. In connection with the original legislation affecting the textile field, section 204 of the Agricultural Adjustment Act, Senator Payne remarked on the Senate floor:

> The textile industry does not seek special favors. But it does ask, Mr. President, that the additional burden of ever-increasing imports not be added to its other troubles. The industry seeks a chance to adjust, to work out its problems, so that once again it can stand strong against all competition from whatever source.

These remarks were made on February 27, 1956, over 25 years ago. What we have experienced since are demands for increased protection instead of liberalization of our textile restraint program. The industry apparently no longer wants a "chance to adjust" but seeks permanent protection and a guaranteed share of the market. After 25 years, we have a rigid system of comprehensive quotas, the highest duties in the tariff schedules, and an exemption from GSP for textile products. We firmly believe that adjustment should be the touchstone of our policy in this area and that our actions under the MFA should be directed toward that end. Clearly the time has come for a new look and a reevaluation of our textile policies.

Our written testimony notes the delicacy of the current MFA negotiations, and we are hesitant to comment in detail on them. AAEI-TAG fears the possibility that the MFA may not be extended because of the protectionist positions of the United States and Europe. Public attention has been focused on the more extreme elements of European proposals. This should not, however, obscure the fact that on the key elements of growth and flexibility, together with other elements of the proposed protocol of extension, both Europe and the United States are taking identical positions which would lay the groundwork for more restrictive bilateral agreements. We believe this position completely contradicts the general trade policies of the United States as enunciated in the administration's white paper. These policies call for a liberalization of trade and reliance upon adjustment through market mechanisms.

AAEI-TAG continues to support extension of the MFA as originally agreed to in 1974 without the reasonable departures doctrine introduced in 1977. We consider it important that the current MFA rules be adhered to in implementation of the MFA and in bilateral negotiations.

We wish to direct our remarks today to the need for a major policy review and for corrective action in the administration and daily operation of the textile program. On a policy level, we believe that a major review should be conducted by the administration on the competitive impact of imports on a category basis and the prospects for adjustment on the part of the domestic industries manufacturing in each category, with a view to distinguishing between those categories in which protection is not needed and those in which real problems exist.

We believe that the long-range future of the sectors involved should be assessed with a view toward phasing out import controls, and policies should be adopted which will facilitate adjustment to import competition.

In view of the importance of textile policy, such a review should be under the overall direction of the Cabinet Council on Commerce and Trade.

As a first step to such a review, the U.S. International Trade Commission should be assigned responsibility for developing a full body of current data on an import category basis of the economic condition of the domestic textile and apparel industries. These data do not exist today. In their absence, it is impossible to determine which textile and apparel industries are competitive and need no protection, which need protection to adjust and become competitive, and which industries cannot be helped by protection. Policy could then be formulated to provide assistance appropriately limited to industries which can use such assistance and benefit from it.

Corrective action is also needed in textile program administration. As presently operated, the program is grossly unfair. The domestic textile and apparel industry-union complex in effect sets Government policy in textiles and apparel. Decisionmaking has degenerated into a numbers game involving imports, without a realistic appraisal of the need for restrictive actions or their effect in the market. The question of market disruption, critical to action under the MFA and bilateral agreements, is ignored.

These decisions are made secretly, disregarding the most basic elements of due process; advance notice of contemplated Government action; an opportunity for interested parties to review the underlying information upon which such action is contemplated;

and an opportunity for meaningful comment by interested parties with an assurance that any comments will be fully considered. This situation stands in marked contrast to the due process requirements of all other aspects of trade regulation.

The recent embargo of wool sweaters from the People's Republic of China provides a clear example of the irrationalities and unfairness of the current closed system.

In the case of wool sweaters, the United States requested consultations to establish restraints levels on these products within a month of signing of the United States-China Bilateral Textile Agreement. No advance notice of this action or opportunity to comment was provided importers and other interested parties. Only after the actual request for consultations had been made to the Chinese was the public notified, and even then no information was provided the public to justify restrictions on imports from China of these products.

AAEI-TAG was able to comment on this action only after obtaining through the Freedom of Information Act the market statement purporting to justify the request. Our review of the market statement for wool sweaters revealed a complete absence of any information to support a finding of market disruption. The statement contained no current U.S. production data for wool sweaters, and no data whatsoever on employment, profitability, or the other factors required under the MFA in general and under the agreement. Public information also showed that the industry was not suffering or threatened with market disruption. Our detailed critique of the market statement was perfunctorily acknowledged and ignored.

In January of this year, CITA unilaterally imposed a restraint level at a fraction of 1980 imports. The result was an embargo of wool sweaters in February.

The illegality of these actions was recognized by the Court of International Trade in the landmark case of *Associated Dry Goods Corp.* v. *United States.* Despite Government contentions that its determinations of market disruption were foreign policy determinations immune from judicial review, the Court held that these actions are more administrative than foreign policymaking. The Court stated, and I quote:

> To arrive at a belief that there was market disruption or the threat of market disruption, CITA had to evaluate import data and the state of the domestic industry. If those actions or determinations were not based on sufficient data or if incorrect conclusions were drawn from such data and plaintiff was injured as a result, review of CITA's determinations by this court is proper.

The Court went on to rule that in the case of wool sweaters from China, CITA's finding regarding market disruption was unsupported by sufficient data.

AAEI-TAG believes that the ADG case supports the position we have taken for some time that CITA's actions require reasoned findings based upon current domestic industry data and that its actions are subject to administrative due process. To date, however, the textile program has not taken steps to insure that its actions meet with these substantive and procedural requirements. If anything, decisionmaking has become more secretive as the textile program now illegally classifies market statements to avoid their becoming public under the Freedom of Information Act. This fear of public scrutiny of textile program actions is so intense that at one point, in response to a Freedom of Information Act request, textile program officials classified the market statement on wool sweaters, which they had already released to us, as well as a market statement on brassieres from the Dominican Republic published in the Federal Register 3 years ago.

We believe this system of decisionmaking in secrecy and by conjecture must cease. Our written testimony includes an appendix of detailed recommendations for improvement of the textile program's due process and administration. We urge the committee to support these needed improvements.

The serious problems of the textile program faced by importers and retailers extend beyond secrecy and unreasoned decisions to the daily management of quota level. These management problems are so disruptive of textile and apparel imports they represent a significant additional nontariff barrier to trade. During 1980, the U.S. Government imposed 34 separate embargoes on textile and apparel products; in 1981 through November, the U.S. Government imposed 26 such embargoes. While some of these were undertaken as a result of simple overshipments from supplier countries, far too many were the result of errors in data collection or administration of the textile program.

These needless embargoes are extremely costly to importers, retailers, and ultimately to consumers. Apparel products in particular are seasonal goods, subject as well to rapid changes in fashion. Delays in delivery, even if only for a few weeks, diminishes their value significantly. Yet despite enormous expenditures of funds for staff and statistical monitoring, the needless embargoes continue.

Moreover, the problem of these embargoes is aggravated by the attitude of textile program officials. Too often, when errors are brought to the attention of the responsible public official, the response is indifference or worse. No immediacy is given to a resolution of the problems they have created. No flexibility is demonstrated in minimizing the effects of their actions. This attitude is itself highly improper in public officials and an affront to importers and retailers whose interests are affected.

Our written testimony details recent embargoes of apparel products from the Philippines, Macau, Romania, and Korea, which are illustrative of these problems. Of these, we consider the recent embargo of over 500,000 dozen manmade fiber woven shirts from Korea the most serious.

The embargo situation on Korean shirts arose only because the United States insisted upon maintaining an artificial distinction under the Korean agreement between dress and nondress shirts, and because CITA failed to direct Customs to administer the system as required under the agreement with Korea and as necessary for administration of quotas in the categories involved.

However, rather than resolve the matter through a merger of the disputed categories, which was logical given the existence of this artificial distinction which exists only in the Korean agreement, textile program officials insisted that Korea demonstrate these disparities on a detailed entry-by-entry basis—an impossibility. Eventually the United States "agreed" to "permit" an additional 350,000 dozen nondress shirts to be entered in 1981, only a portion of the goods involved.

In addition, the United States insisted on compensation for lifting the embargo by a reduction in the 1982 base quota for dress shirts. After an embargo of over 2 months, Korea was finally forced to accede to this blackmail to avoid irreparable damage to its U.S. customers in the midst of the Christmas season. As importers affected by this embargo, we find the conduct of the textile program on this matter to be appalling.

AAEI-TAG hopes that implementation of the recommendations on administration and due process it has put forward will go a long way to improving the operations of the textile program. Yet, underlying this distressing performance is a basic attitude on the part of textile program officials that importer, retailer, and consumer interests need not be considered and that the program exists as an extension of the domestic textile and apparel industry. This attitude must be corrected by transparency of procedures conforming to the due process provisions of law and the Constitution. The national interest extends beyond the narrow interests of a single group, no matter how powerful. Government has a responsibility extending to all groups and must act impartially within the bounds of law and equity. It is essential that the textile program—in its policy formulation, in its administration, in its day-to-day operations—recognize the broader national interests and take these interests into account in its decisions and actions.

That concludes my oral testimony, Mr. Chairman.

[The prepared statement follows:]

STATEMENT ON BEHALF OF THE TEXTILE AND APPAREL GROUP, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE ON TRADE:

My name is Peter V. Handal. I am the President of Victor B. Handal & Bro., Inc. of New York City. I appear before this Subcommittee in my capacity as Chairman of the American Association of Exporters and Importers, Textile and Apparel Group (AAEI-TAG). I am also a member of the Importers and Retailers Textile Advisory Committee. I am accompanied today by Counsel to the Group, Michael P. Daniels, of the firm of Daniels, Houlihan & Palmeter, P.C. of Washington, D.C.

In connection with the original legislation affecting the textile field, Section 204 of the Agricultural Adjustment Act, Senator Payne remarked on the Senate floor:

> "The textile industry does not seek special favors. But it does ask, Mr. President, that the additional burden of ever-increasing imports not be added to its other troubles. The industry seeks a chance to adjust, to work out its problems, so that once again it can stand strong against all competition from whatever source"

These remarks were made on February 27, 1956, over 25 years ago. What we have experienced since are demands for increased protection instead of liberalization of our textile restraint program. The industry apparently no longer wants a "chance to adjust" but seeks permanent protection and a guaranteed share of the market. After 25 years, we have a rigid system of comprehensive quotas, the highest duties in the tariff schedules, and an exemption from GSP for textile products. We firmly believe that adjustment should be the touchstone of our policy in this area and that our actions under the MFA should be directed towards that end. Clearly the time has come for a new look and a reevaluation of our textile policies.

We are appearing before this Committee at a very difficult time. The negotiations in Geneva on extension of the MFA are apparently deadlocked and there is at least a real possibility that they will break down completely, with a failure to extend the MFA beyond its expiration date of December 31 of this year. We recognize the delicacy of these negotiations and have no desire to complicate the problems involved by anything which we might say here today. It is very clear to us, however, that the crisis in these negotiations results from the protectionist position taken by the United States and the even more protectionist position taken by Europe. Public attention has been focused on the more extreme elements of European proposals. This should not, however, obscure the fact that on the key elements of growth and flexibility, together with other elements of the proposed protocol of extension, both Europe and the United States are taking identical positions which would lay the groundwork for more restrictive bilateral agreements. We believe this position completely contradicts the general trade policies of the United States as enunciated in the Administration's White Paper. These policies call for a liberalization of trade and reliance upon adjustment through the market mechanisms.

If the negotiations in Geneva fail, it will be due to the regressive positions being taken by the United States and Europe. The Developing Countries are reluctant to accept even tighter restrictions on their trade in textiles. This would contradict the MFA itself and the representations made in Cancun that economic progress for developing countries lies in open markets and a free world trading system.

AAEI-TAG has favored an extension of the MFA as it was originally agreed to in 1974 without the Reasonable Departures Doctrine introduced in 1977, which completely destroyed the integrity of the MFA. The MFA itself is a framework agreement and we believe that the rules set forth in the instrument provide reasonable guidelines and rules governing the trade. What is important to us is adherence to these rules in the implementation of the MFA by the United States and in bilateral negotiations with supplying countries.

The United States textile program has degenerated over the years. We believe that this is almost inevitable in this kind of quota program. It has come to be completely dominated by the coalition of industry and unions with an immediate interest in extreme protection. Increasingly, the bureaucracy responsible for operating the program has been subject, at least, to a veto power by the textile lobby. There is, in our view, an undue influence on both negotiations and the administration of the program by these industry groups. It has robbed government of independence of action in the national interest.

There is a pressing need to rectify this situation by a new look at the program, what it is intended to accomplish, and the administrative machinery for implementation. We believe it imperative to achieve greater transparency of procedures and ensure that decisions are made upon the basis of the economic facts, rather than as a result of political pressure and undue influence of industry trade associations and the unions. There is a need for greater insulation of the bureaucracy from such pressure and for review of decisions at higher levels of government to ensure conformity with overall trade policy.

If the MFA is extended, we believe that it is necessary to conduct a major policy review of the textile program and the administration of this program.

Policy Formation

Although we have repeatedly requested a major high-level review of the textile program, we have found that decisions are made in the dark without public discussion and in close collaboration with the industry lobby. It is shocking to us that these decisions are being made without either an analysis of the economic facts or the real needs and prospects of the domestic industry. We would suggest as a first step such a major review by government with the assistance of the International Trade Commission. The Committee may not realize that our statistics on production on a category basis lag by about a year and a half so that decisions are not being taken on the basis of current data. As a first step, we believe that the International Trade Commission should be charged, through the utilization of its questionnaire procedures, to keep a constantly updated series on domestic production by category so that at least the fundamental facts upon which textile policy is made are available to policy makers.

We then believe that a major review should be conducted by the Administration on the competitive impact of imports on a category basis, the prospects for adjustment on the part of the domestic industries manufacturing in each category, with a view to distinguishing between those categories in which protection is not needed and those in which real problems exist.

We believe that the long range future of the sectors involved should be assessed with a view towards phasing out import controls and policies should be adopted which will facilitate adjustment to import competition.

Much work has already been done on the adjustment process in the domestic industries, including a major study prepared by Kurt Salmon Associates for the Department of Commerce. We believe that the recommendations and analysis contained in this report will be extremely useful in such a major policy review and that further studies should be undertaken.

What we have now is a numbers game in which the sheer growth or magnitude of imports without reference to market considerations becomes determinative of restraint actions. We believe that this approach has led to overly restrictive and unnecessary policies of restraint without a future goal in mind.

There are clearly segments of the textile product complex, including all of the textile mill sector, where no restraint is needed at all. There are other areas where it is impossible for domestic industries to compete and protection would serve no purpose. In other categories, product differentiation in the market place between imports and domestic production has already taken place (such as children's clothing), and there is no need for protection of entire categories, or at least an accelerated program of import liberalization would appear appropriate. There are still other areas where import protection might facilitate adjustment on the part of the domestic industry. We believe that only a serious review by government could sort all of this out and formulate a textile policy which makes sense for the United States.

We believe such a policy review should be under the overall direction of the Cabinet Council on Commerce and Trade, utilizing the resources of government departments and the International Trade Commission. Since our bilateral agreements, for the most part, will continue through 1982, we believe that such a major review could be accomplished in a period of six months, allowing time in the second part of 1982 for bilateral negotiations or other policies of implementation as may be appropriate. We believe that the widest opportunity should be given to all segments of the public to participate in this process, including the submission of written briefs and other materials as well as oral presentations and the opportunity for full discussion between the government and the private sector.

Bilateral Negotiations

Such a review would provide the basis for policies with regard to bilateral negotiations. The United States has taken the position that it will seek, in the next round of bilateral negotiations, to reduce the growth and flexibility of major suppliers to our market. It is not clear whether this will be permitted by the terms of extension of the MFA. Regardless of the outcome of MFA negotiations, we strongly believe that the United States should adhere to the normal rates of growth and flexibility set forth in the text of the MFA. We believe the 6 percent rate for growth set forth in the MFA is essential if the adjustment process is to go forward. What the United States industry is seeking is not an adjustment policy but a permanent market share. Diminishing the flexibility provisions as advocated by the domestic industry will prevent utilization of quota and will make it impossible to adapt quota to changes in demand for various products and cyclical factors in the marketplace from year to year.

Adherence to the minimal rates will also introduce a degree of automatacity in application which will avoid the worst abuses of political pressure brought to bear on our textile negotiators by the union-industry coalition.

Differentiation between suppliers in accordance with size is, in our view, merely an attempt to cut down the total volume of trade. The MFA clearly provides for better treatment for small suppliers and new entrants to the marketplace. It does not provide for worse and discriminatory treatment, compared to the normative rates set forth in the MFA, for major suppliers.

As importers we believe that the sourcing of textile products will change in the future, as it has in the past, and we have a great interest in developing the smaller suppliers. Nonetheless, it is clear that we are highly dependent upon major suppliers for the quantities and qualities which the American distribution system demands.

The new principles of discrimination which the United States seeks to introduce into the MFA, furthermore, would inevitably be subject to abuse in the future as newer suppliers reach higher levels of exports to the United States. There is uncertainty as to how many countries Europe now classifies as major suppliers other than the United States, and we are sure that the United States' list, which is now confined to three, would expand under pressure from industry.

To introduce further discrimination into an already discriminatory agreement seems to us to be bad trade policy and subject to abuse in other fields. The United States itself could become the victim of such discrimination in its exports of textiles and other products.

In short, we believe the United States should subscribe to an extension of the MFA as is and then scrupulously adhere to the rules set out in the Arrangement.

Administration

The Administration of the textile program presents glaring deficiencies, contrary to the program's underlying purposes and inconsistent with the U.S. national interest and its international obligations.

As presently operated, the program is grossly unfair. The domestic textile and apparel industry-union complex in effect sets government policy in textiles and apparel. The goal of these groups is to restrict imports irrespective of their actual impact. As a result, decision-making has degenerated into a numbers game, with increased imports alone sufficient to trigger restrictive actions. Little or no consideration is given to any realistic appraisal of the domestic market situation. The question of market disruption, critical to action under the MFA and bilateral agreements, is ignored. Also ignored are the needs of importers, retailers, and consumers, who have a major stake in any such government action.

This sorry state of affairs is due in significant measure to the textile program's utter disregard for the most basic elements of due process: advance notice of contemplated government action; an opportunity for interested parties to review the underlying information upon which such action is contemplated; and an opportunity for meaningful comment by interested parties with an assurance that any comments will be fully considered.

This situation stands in marked contrast to the due process requirements of all other aspects of trade regulation, including dumping and countervailing duty investigations, escape clause proceedings, Section 337 cases, and GSP annual product reviews. Each of these trade regulation proceedings is open and transparent. All interested parties are given advance notice of possible Government action and an opportunity to comment. In these proceedings, Government decisions are based upon a body of information made available to the public, subject to business confidentiality.

The recent embargo of wool sweaters from the People's Republic of China provides a clear example of the irrationalities and unfairness of the current closed system. As the Committee is aware, a bilateral textile agreement between the United States and China was signed in September of last year.

That Agreement established specific limits for certain categories of textile products, not including wool sweaters. As for other, non-specific limit, categories, the Agreement contemplated that restraint levels be established only if imports cause or threaten market disruption, that is, only if imports cause or threaten serious injury to the domestic industry producing "like or directly competitive products."

In the case of wool sweaters, the United States requested consultations to establish restraint levels on these products within a month of signing of the U.S.-China Bilateral Textile Agreement. No advance notice of this action or opportunity to comment was provided importers and other interested parties. Only after the actual request for consultations had been made to the Chinese was the public notified, and even then no information was provided the public to justify restrictions on imports from China of these products. Obviously, a meaningful opportunity to comment is impossible under these circumstances.

AAEI-TAG eventually obtained the information claimed by the Administration to justify the request for consultations, through the filing of a formal Freedom of Information Act request for the market statement which the United States is required under the Agreement to provide to China to justify a request for consultations. This was one of the only times these market statements have been made public, despite our understanding that these statements generally contain only non-confidential domestic industry and import data.

Our review of the market statement for wool sweaters revealed a complete absence of any information to support a finding of market disruption. Despite the requirement in the U.S.-China Textile Agreement that a request for consultations to restrict imports be justified on the basis of current data, the statement contained no current U.S. production data for wool sweaters, and no data whatsoever on employment, profitability, or the other factors bearing on the economic condition of the domestic wool sweater industry required for restrictive actions under the MFA in general and under the Agreement. Moreover, public information showed that the industry was not suffering or threatened with market disruption, and trade publications quoted domestic sweater industry officials as stating that 1980 was a record year for the wool sweater industry and that they anticipated 1981 would be better still. In fact, the market statement itself pointed out that domestic sweater shipments increased 26 percent in the eight-month period preceding the call.

In December of last year AAEI-TAG advised CITA of the absence of any justification for restrictive action on China sweater imports in a detailed critique of the market statement. Our submission was perfunctorily acknowledged and ignored, and following the failure of the United States to coerce an agreed upon restraint level from China on these products during the Agreement consultation period, CITA unilaterally imposed a restraint level in January of this year at a fraction of 1980 imports. The result was an embargo of wool sweaters in February. Again no notice or opportunity to comment was provided prior to CITA's unilateral decision to impose an import restraint level and import controls on these products.

The illegality of CITA's actions with respect to wool sweaters was recognized by the Court of International Trade in the landmark case of Associated Dry Goods Corp v United States. Despite Government contentions that its determinations of market disruption were foreign policy determinations immune from judicial review, the Court held that these unilateral CITA actions are more administrative than foreign policy making:

> "To arrive at a belief that there was market disruption or the threat of market disruption, CITA had to evaluate import data and the state of the domestic industry. If those actions or determinations were not based on sufficient data or if incorrect conclusions were drawn from such data and plaintiff was injured as a result, review of CITA's determinations by this court is proper."

The Court went on to rule that in the case of wool sweaters from China, CITA's finding regarding market disruption was unsupported by sufficient data, contrary to the requirements of the U.S.-China Textile Agreement.

The Court's holding that CITA's actions to restrain imports are administrative and subject to judicial review is clearly a recognition that U.S. actions affecting textile imports are required to meet the same legal and Constitutional standards as other U.S. Government actions affecting individuals' rights and interests, including the requirements of due process.

AAEI-TAG has on numerous occasions written to Government officials responsible for textile policy requesting as a matter of policy and due process that importers, retailers and other interested parties formally be given timely notice, all relevant data and documents, and an opportunity for public comment, through publication in the Federal Register, in all instances where the United States intends to take actions which may result in limitations on imports of textile and apparel products.

To date, those responsible for administration of the textile program have maintined the same untenable position, rejected by the Court in the ADG case, that these injury determinations are foreign policy and not subject to normal administrative constraints. This position can be supported no more on the question of due process than on the question of judicial review, and AAEI-TAG will continue to pursue its due process rights in this area.

Moreover, in response to our efforts to open the administration of the program to public review, the textile program has sought to further insulate itself from public scrutiny by burying the market statement justifications for its restraint actions behind a facade of national security confidentiality.

This blatant and willful misuse of the national security classification system shows that those running the textile program recognize how irrational and unsupportable their actions are and how fearful they are of public awareness of this situation.

AAEI-TAG did not, and does not, consider the FOIA process to be a reasonable substitute for the due process requirement that information upon which actions intending to restrict textile and apparel imports are based be published. Use of the FOIA process after Government action has been taken cannot provide information in a timely fashion for meaningful comment. Moreover, no justification exists for requiring that individuals formally request information as a pre-condition to obtaining information which should be available to them as a matter of right and fundamental fairness. However, following its receipt of the market statement on wool sweaters from China, AAEI-TAG submitted an additional Freedom of Information Act request for the market statements submitted in justification of other requests for consultations during 1979 and 1980. In response, we were informed that our request had been rejected in toto on the basis that these documents had been classified under the Executive Order for national security classification, Executive Order 12065.

We eventually learned that these documents had been classified only following our Freedom of Information Act request for them. We also learned that included among the documents classified as a result of our request was the market statement on wool sweaters from China which we had previously received pursuant to our earlier Freedom of Information Act request and the market statement on brassieres from the Dominican Republic published in the Federal Register two years before.

Classification of these documents in this manner after our FOIA request violates both the letter and the spirit of the Executive Order on national security classification. Under that Executive Order, classification under these circumstances must be undertaken on a document by document basis, and must indicate clearly which portions are classified and which portions are not. Moreover, materials cannot be classified "unless disclosure reasonably could be expected to cause at least identifiable damage to the national security." Classification may not be used to conceal "violations of law, inefficiency or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition."

These market statements contain nothing of national security interest. These documents also contain virtually nothing demonstrating that any domestic industry is being injured or threatened with injury by imports. Classification of these and other market statements merely seek to avoid embarrassment to the textile program and to conceal violations of law, inefficiency and administrative error. Yet this classification process continues. Just last week our request for the market statement justifying the request for consultations on China printcloth was denied in its totality, with no distinction made between portions properly classifiable and those not. While we have received statistical information on those products in response to a separate FOIA request, this information is insufficient to determine the precise basis for government action. Thus the public remains in the dark as to even the pro forma justification for textile program actions.

AAEI-TAG's experience in obtaining basic information on government action affecting its members' rights and interests would be comic if the effect of these government actions were not so serious. The textile program's fear of public scrutiny, moreover, is indicative of the degree to which administration of the textile program has degenerated, and how the absence of openness and due process in this program has evoked a seige mentality in the textile program while at the same time allowing the abuses of the program to grow unchecked.

The openness and due process must be brought into the textile program for the public good as a matter of right and equity. Notice of all intended actions to restrict textile imports and of action when actually taken should be published in the Federal Register, with full factual support and an opportunity for public comment. All comments submitted by the pubic regarding these actions should be subject to review at appropriate levels of government, including the Trade policy committee. Timely publication should also be required of all market statements purporting to justify restrictive actions, of summaries of all actions taken by CITA and other bodies on textile products, and of all agreements reached with foreign countries. There have been cases (Korean sweaters, for example) in which agreements have been reached without timely information to the public, making it impossible for importers and retailers to plan their business activities. Our detailed recommendations on these matters are set forth in a separate Appendix of Recommendations on Administration and Due Process in the Textile Program.

The serious deficiencies in the administration of the textile program are compounded by the inordinate power to restrain textile and apparel imports given mid-level Government officials operating under delegated authority within CITA. Such power is unprecedented in the trade field and in Government generally, and has led to a narrow-minded pursuit of restrictive actions even where contrary to our national interest.

Decisions to restrict imports are taken without regard to these broader considerations of international economic policy. These decisions are left to CITA and its delegates, whose cozy, long-term relationship with domestic textile and apparel pressure groups and narrow institutional responsibilities make it ill-suited for broad policy judgments.

Moreover, as currently constituted, the power of CITA is concentrated in the Commerce Department representative through a system requiring unanimous opposition by other CITA members to overturn the Commerce representative position. As expected, therefore, CITA reflects the narrowest views of the domestic textile and apparel industry. AAEI-TAG believes that policy decisions in textile and apparel should be raised to appropriate levels of Government to ensure consideration of the full range of domestic and foreign policy concerns -- the Trade Policy Staff Committee, The Trade Policy Committee Review Group, the Cabinet level Trade Policy Committee, and the Cabinet Committee on Commerce and Trade, with final decisions subject to Presidential approval. CITA's activities should be limited to recommendations concerning implementation of textile agreements and implementation of decisions of these groups and the President, and its membership expanded to reflect the full range of trade and economic issues affected by its actions. Also, all CITA meetings should be public, and CITA decisions should be by majority rule. (See Appendix of Recommendations attached.)

In addition, CITA lacks both the staff and the expertise to evaluate the economic condition of domestic textile and apparel industries. CITA's limited staff is trained to compile and analyze import statistics. This expertise is irrelevant to evaluating the economic condition of a domestic industry which requires collection and evaluation of data and information on production, profitability, capacity, productivity, employment and investment in the broad context of the domestic market situation and economic trends. Absent objective economic analysis of necessary and important data, conclusions regarding the economic condition of a domestic industry are merely conjecture, colored by the subjective judgments and preconceptions of those involved. Such conclusions do not meet the requirements of the MFA and bilateral agreements that restrictive actions against imports be undertaken only upon a finding of actual or threatened market disruption based upon evaluation of current data. This is particularly true when such conclusions are reached by an interagency group such as CITA, which views its mission as restricting imports and which is unduly influenced by domestic industries clamoring for such restrictions.

Fair and proper administration of the textile program requires that determinations of market disruption caused by imports be undertaken on an objective basis, by an impartial body experienced in the collection and evaluation of data and information on the economic condition of domestic industries subject to import competition. This combination of objectivity and expertise can be found at present only at the U.S. International Trade Commission, an independent agency which undertakes economic analysis of domestic industries, including the textile and apparel industries, on a daily basis. AAEI-TAG believes, therefore, that responsibility for determination of actual or threatened market disruption in textiles and apparel, subject to final decision in the national interest by the President, should be assigned to the ITC, with provisions for investigations, hearings and a public report.

AAEI-TAG also believes that the process of market disruption determinations could be improved immeasurably through the development of a current data base on domestic textile and apparel industries deemed most likely to be affected by import competition. Such a data base would include information on all the economic factors bearing on the economic condition of domestic textile and apparel industries necessary for objective market disruption determinations. Development of this data in advance would facilitate timely reviews of domestic industries thought to be suffering actual or threatened market disruption and would be particularly useful for reviews of apparel industries, characterized by numerous manufacturers.

As with the actual determinations of market disruption, the ITC has the staff and experience to undertake such data collection. AAEI-TAG strongly urges that the ITC be designated to develop and periodically update data bases on the domestic textile and apparel industries.

Embargoes and Quota Management

In addition to the significant shortcomings in administration of the textile program detailed above, serious problems exist in the routine daily management and monitoring of quota levels. These management problems are so disruptive of textile and apparel imports they represent a significant additional non-tariff barrier to trade. During 1980, the U.S. Government imposed 34 separate embargoes on textile and apparel products; in 1981 through November, the U.S. Government imposed 26 such embargoes. While some of these were undertaken as a result of simple overshipments from supplier countries, far too many were the result of errors in data collection or administration of the textile program.

These needless embargoes are extremely costly to importers, retailers, and ultimately to consumers. Apparel products in particular are seasonal goods, subject as well to rapid changes in fashion. Delivery of these products to retail outlets must be made in a timely manner for those products to obtain full value. Delays in delivery, even for a few weeks, diminish their value significantly. As these goods are often only a part of a marketing strategy for a wide range of imported and domestic products, costs of delay frequently extend beyond the actual goods subject to delays.

Importers and retailers are powerless to counter the dangers to their business operations from these embargoes.

Decisions to purchase textiles and apparel overseas are typically made well in advance of final delivery of goods to retail markets. Actual contracting for these goods occurs many months prior to expected shipment and importation dates. Under these circumstances, substitution on short notice of alternatively sourced goods, either domestically or through imports, is impossible. Moreover, as the United States most frequently institutes those embargoes towards the end of a quota year, during the Christmas holiday season, the dislocations and costs are magnified enormously.

In addition, normal commercial practice requires the transmittal of an irrevocable letter of credit from the purchaser to the manufacturer as part of these contracts, thereby committing an importer's funds without recourse many months in advance of delivery. Thus, the costs of a delay or failure of delivery due to an embargo are borne exclusively on the U.S. side.

Under these circumstances any improper or unnecessary embargo is a costly disruption to importers and retailers which the textile program should work to avoid. Despite enormous expenditures of funds for staff and statistical monitoring, this has not been done. On the contrary, not only does the essential problem of improper and unnecessary embargoes continue, it is aggravated by the attitude of textile program officials. Too often, when errors are brought to the attention of the responsible public official, the response is indifference or worse. No immediacy is given to a resolution of the problems they have created. No flexibility is demonstrated in minimizing the effects of their actions. This attitude is itself highly improper in public officials and an affront to importers and retailers whose interests are affected.

Recent incidents involving embargoes of apparel products from the Philippines, Macau, Romania, and Korea are indicative of the problems of quota management plaguing the textile program and the attitudes and actions of textile program officials when these problems are uncovered.

The Philippines

The embargo of goods from the Philippines involves infants' cotton coats (part of Category 335). Under the U.S.-Philippines Agreement, infants' wear is designated "traditional" trade and is treated separately from other "non-traditional" products. This distinction is unique to the Philippines and in some instances does not comport with tariff schedule classifications which include women's, girls' and infants' apparel under the same TSUSA number. Despite the difficulties inherent in Customs maintaining a distinction for quota purposes between women's and girls' coats and infants' coats, CITA placed infants' coats under import control in 1981. The result was an embargo imposed on infants' coats from the Philippines on September 14, 1981, due to charging of non-infant coats to the infants' coat quota.

This embargo remained in effect until early November when CITA directed Customs to adjust its charges to more accurately reflect actual shipments made.

Macau

In the case of Macau, the bilateral agreement requires that Macau visa its shipments to the United States showing the correct category. However, unlike the situation with other visa systems, U.S. Customs does not deny entry to Macau goods visaed with an incorrect category. Earlier this year coats exported by Macau under its manmade fiber quota were reclassified by U.S. Customs and charged to Macau's cotton coat quota, resulting in an embargo of all cotton coat shipments from Macau. The embargo of these goods lasted almost two months, an unreasonable delay for an embargo resulting from classification differences.

Effective administration in this instance would have required that visa category designations be checked when goods were offered for entry to alert all parties, including importers, to the classification problem.

Romania

The U.S.-Romania agreement establishes a consultation level on the combined category of women's wool coats and wool suits. During 1981, this category was not administered by U.S. Customs. Instead, CITA relied on U.S. Census data for quota administration. In this instance, Census data through September showed overshipments in excess of 30 percent. Based on these numbers, CITA quickly directed U.S. Customs to embargo all further entries of wool coats and wool suits produced or manufactured in Romania. Following objections to the embargo by Romania, CITA discovered that U.S. data reflected each piece of apparel as a dozen pieces of apparel. The correction of the U.S. data resulted in a reopening of the categories.

The embargo of these products was totally unnecessary. It did not result from automatic Customs action to enforce a specific limit under import control, but rather resulted from discretionary CITA action. Even a cursory review of basic Census data on weight and unit value of the product in question would have raised suspicions as to the accuracy of the imports reported. Follow up with Romania, a simple courtesy in the case of a consultation level, would have resolved the question.

Korea

Since 1972, the U.S.-Korea Textile Agreement has made woven manmade fiber shirts from Korea subject to two separate specific limits -- one for dress shirts, one for non-dress shirts. These goods are also subject to a requirement that they be visaed with the correct category classification as a condition for U.S. Customs allowing their entry into the United States. This visa requirement was intended to protect importers and exporters and the domestic industry from classification problems as well as from fraudulent shipments. Everyone was assured that only the shipments visaed in a category would be permitted entry and charged to that category. No items would be exported as one category and entered and charged to another category without the express permission (waiver of the visa requirement) of the Korean Government.

The distinction between dress shirts and non-dress shirts has been a fiction for many years, subject to the vagaries of fashion and Customs classification. Nevertheless, the United States has insisted that those two categories be subject to separate quotas only in the case of Korea. Prior to 1980 this artificial distinction had not created quota administration problems. However, as a result of 1979 revisions of Customs classification guidelines, disparities between U.S. and Korean classifications emerged in 1981 on equal to 30 percent of permitted non-dress shirt shipments.

Had the visa system been properly administered, this disparity would have resulted in an initial temporary denial of entry of some goods, with consultations to resolve classification differences. However, CITA negligently failed to direct Customs to deny entry to shirts on the basis of the dress shirt-non-dress shirt category distinction. Instead, shirts classified and visaed by Korea as dress shirts were entered, classified as non-dress shirts, and charged to the non-dress shirt category, without notice to Korea or anyone else. As a result, the United States imposed an embargo on the non-dress shirt category into which the reclassified shirts were categorized upon entry. The magnitude of the goods embargoed is estimated to be in excess of 500,000 dozen shirts.

It is extremely annoying to know that this amount of trade was so cavalierly ignored by CITA when instructing Customs to administer the quota. It completely destroyed the classification reliability which importers had come to depend upon. Furthermore, it was in violation of the U.S.-Korea visa arrangement.

We still have had no explanation from CITA concerning this situation other than the continued excuse that their lawyers believe the shirt categories are in fact subcategories, even though the agreement quite explicitly makes them separate categories.

Actions of textile program officials subsequent to the discovery of this U.S. failure in administration are even more egregious. Rather than resolve the matter through a merger of the disputed categories -- a logical solution given the existence of this artificial distinction only in the Korean agreement -- these officials insisted that Korea demonstrate these disparities on a detailed entry-by-entry basis. This was impossible, particularly because the United States does not maintain entries which conform to basic export records. Textile program officials were well aware of this. We have learned that eventually the United States "agreed" to "permit" an additional 350,000 dozen non-dress shirts to be entered in 1981. This, by their own number, addresses only a portion of the goods which were illegally reclassified and entered. In addition, the United States will be compensated for this "generous" offer by a reduction in the base level for the dress shirt category in 1982, thereby penalizing Korea. Korea was blackmailed into accepting this unconscionable resolution because of the costs to its U.S. customers which this improper embargo imposed in the midst of the Christmas season.

The litany of events surrounding the Korean shirt embargo is demonstrative of the sorry state of textile program administration relating to quotas. The problem in the first instance could arise only because the United States insisted upon maintaining an artificial distinction in textile categories under the U.S.-Korea Agreement. The problem actually resulted from CITA's failure to direct Customs to administer the visa system as required under the visa agreement and as necessary for administration of quotas in the categories involved. The problem was aggravated dramatically by the textile program's inflexible and indifferent administration and by its desire for some unilateral advantage inconsistent with the equities of the situation. It is a disgrace that an embargo based upon legitimate classification differences should be maintained over two months during the busiest retail season for these goods because of U.S. mistakes and its willful failure to solve the problem quickly and equitably. That Korea, and importers and retailers, are to be penalized for textile program misadministration in violation of agreements, is appalling.

The above situations represent only examples of the embargoes and harrassment of the textile and apparel trade in this country. We feel that unilateral incompetence on the part of CITA was responsible for the costs and business interruption incurred by the importers as well as the exporting companies. U.S. credibility in carrying out its Agreements also has become suspect as a result of these actions.

We, as importers, have tried working with the textile program with a view to correcting these problems. We had been promised some time ago that the funds appropriated to the Office of Textiles and Apparel and the U.S. Department of Commerce would be used to install a computerized system to allow CITA to correct these problems. It has been some time since those promises were made and we understand that the computer system is now in place and will operate efficiently. However, the ability to match import and export records has not yet been solved. Moreover, we do not see the installation of a multi-million dollar computer system as being capable of correcting the disparities between negotiated agreements and U.S. Customs Service regulations, or the attitudes of textile program officials hostile to legitimate importer and retailers rights and interests.

Conclusion

After 25 years of unprecedented protection in the field of textiles and apparel, the time has come for a major review and reevaluation of our textile policies and programs. Current stated policies, particularly those relating to the MFA and upcoming bilateral negotiations, are directed to increased protection, not liberalization. These statements of policy are contrary to the MFA's purpose of adjustment, which AAEI-TAG believes should serve as the basic guide for policy formation. AAEI-TAG recommends that a major review of policy at appropriate levels of government be undertaken, and that a body of data on the economic condition of the domestic textile and apparel industries be developed to determine the extent to which import protection is necessary. Import protection should be limited only to those areas where it will facilitate adjustment.

The Administration of the textile program also bears critical examination. Current administration is characterized by an unseemly deference to the domestic textiles and apparel industry-union complex, and a complete absence of constitutionally guaranteed procedures. Decision-making has degenerated into a numbers game without a realistic appraisal of the need for restrictive actions or their effect in the market. These decisions are made secretly, in utter disregard of the most basic elements of due process: Notice, information, and an opportunity to comment. Recently, the government has taken the extreme step of classifying statements purporting to justify its restrictive actions. The absence of openness and due process has evoked a mentality in the program in which unreasoned judgments serve as the basis of policy and action.

This sorry situation must be corrected if textile program administration is to operate competently and within the bounds of law and fairness. Administration must be subject to the legal and constitutional requirements of due process. It must be based upon current domestic industry data collected and evaluated by the ITC. Actual decision-making should be transferred to bodies more appropriate for decisions and policy formulation in the field of foreign trade, the TPSC, TPCRG, the TPC, and the Cabinet Committee on Commerce and Trade, and be subject to Presidential approval. The activities of CITA should be confined to recommendations concerning implementation of textile agreements and implementation of decisions of these bodies. CITA membership should be broadened, its recommendations made subject to majority vote, and its activities subject to "sunshine" requirements.

Serious problems existing in the day-to-day management and monitoring of quota levels must also be corrected. Importers and retailers experienced 34 embargoes of their goods in 1980, and 26 through November of this year. As the examples of recent embargoes of textile products reveal, far too many were the result of errors in data collection or administration. Those examples also show at least indifference to the public interest of textile program officials. Needless delays and inflexibility in dealing with these problems compound their cost and are an affront to importers and retailers whose interests are affected.

The implementation of the recommendations on administration and due process we have put forward would go a long way to improving the operations of the textile program. However, underlying this sorry performance of the program is a basic attitude on the part of textile program officials that importers, retailers and consumer interests need not be considered and that the program exists as an extension of the domestic textile and apparel industry. This attitude must be corrected. The national interest extends beyond the narrow interests of a single group, no matter how powerful. Government has a responsibility extending to all groups and must act impartially within the bounds of law and equity. It is essential that the textile program -- in its policy formulation, in its administration, in its day-to-day operations -- recognize the broader national interests and take these interests into account in its decisions and actions.

Appendix

American Association of Exporters and Importers, Textile and Apparel Group, Recommendations on U.S. Textile Program Due Process and Administration

Due Process in U.S. Textile Program Decisions and Actions Affecting Imports:

1. Thirty days prior to the initiation of any restraint under Article 3 of the MFA or Section 204 of the Agricultural Act, a request for consultations or a call under a bilateral agreement, or any other action which would restrain trade, a notice of intention to take such action should be published in the *Federal Register* together with a statement of reasons and the facts upon which such intended action is based. The statement of facts should contain, in all of the above contemplated actions, current data on all of the elements enumerated in Annex A of the MFA. An opportunity to be heard should be afforded all interested parties both through submission of views in writing and at public hearings before the Trade Policy Staff Committee not sooner than ten days nor later than twenty days following notice in the *Federal Register*.

2. At the time of the initiation of any restraint under Article 3 of the MFA or Section 204 of the

Agricultural Act, a request for consultation, a call under a bilateral agreement or any other action which would restrain trade, a notice of such action should be published in the Federal Register with findings and the evidence upon which such findings are based. Such findings should include the reasons for such restaint action and a demonstration that they conform to the standards and criteria of the MFA and the provisions of the bilateral agreements. Following the publication of such notice, opportunity should be afforded to all interested parties for the presentation of views to the TPSC in writing. No consultations shall be undertaken with any foreign government with regard to such action until after interested parties are afforded an opportunity to submit their views and the TPSC, the Trade Policy Committee Review Group and the Trade Policy Committee are afforded an opportunity to review such submissions.

3. Within three days of the time a "detailed statement" or "market statement" is delivered to a country pursuant to a bilateral agreement, a copy of such statement shall be published in the Federal Register.

4. A summary of all actions taken by CITA, the TPSC, the TPCRG, and the TPC shall be published in the Federal Register.

5. A detailed summary of the contents of all agreements reached with foreign countries on textile products, including all amendments, administrative modifications, agreed interpretations or any other matter affecting trade in such products should be published in the Federal Register not later than five working days following the date on which such an agreement was concluded. The full text of all such agreements shall be released by the Department of State within ten working days following the date on which such an agreement was reached.

Administration of the U.S. Textile Program:

1. The activities of CITA should be confined to recommendations concerning implementation of textile agreements and implementation of decisions by the TPCRG and the TPC. CITA functions should not include the initial formulation of negotiating positions in bilateral agreements under the MFA. CITA should also not consider or initiate action to impose unilateral restraint actions under Article 3 of the MFA or Section 204 of the Agricultural Act of 1956, requests for consultations or the exercise of call mechanisms under bilateral agreements or any other actions having the effect of restraining trade. The excluded

activities should be transferred to the normal bodies and mechanisms for decisions and policy formation in the field of foreign trade: The Trade Policy Staff Committee, the Trade Policy Committee Review Group, the Cabinet level Trade Policy Committee, and the Cabinet Council on Commerce and Trade, with final decisions subject to Presidential approval.

2. The membership of CITA should be expanded to make USTR a voting member, and include representatives of the Departments of Agriculture, Defense and Transportation, the Council of Economic Advisers and the Office of Management and Budget.

3. Any member of CITA should be able to put any matter, proposed decision or course of action on the agenda.

4. Minutes of all CITA meetings should be kept and be available for public inspection. All meetings of CITA should be public.

5. All votes should be by majority. All recommendations should be referred to the TPCRG for consideration and decision or referral to the TPC if appropriate.

6. No restraint action under Article 3 of the MFA, Section 204 of the Agricultural Act or under any bilateral agreement, including requests for

consultations, "calls," imposition of embargoes, or any other action having the effect of restraining trade, should be taken unless reviewed and approved by the Trade Policy Committee, subject to final Presidential approval, in order to ensure compliance with the bilateral agreement and conformity with the MFA and the U.S. policy.

7. Initiation of any restraint action should be proceeded by a determination of actual or threatened market disruption, based upon a review of a current data on factors bearing on the economic condition of domestic industry producing like or directly competitive products to the import subject to the contemplated restraint. In making these determinations, the ITC shall hold hearings and provide an opportunity for public comment on ITC determinations. ITC determinations, including a statement of the reasons and findings, shall be made public.

Chairman **Gibbons**. Thank you, sir. This is the first I have heard of your problems with the administrative side of the multi-fiber arrangement. Certainly all Americans are entitled to due process, and transparency, I guess is the best way to describe it, in the process of decisionmaking. We have been stomping on other countries for having nontransparent systems of decisionmaking in the trade field, and certainly we should not be burdened with those ourselves.

Mr. **Handal**. We appreciate that, Mr. Chairman. Thank you.

Chairman **Gibbons**. You probably heard the dialog that I had with the previous witness about imports versus domestic-produced items. He was saying as I remember that imports came in with much cheaper labor and a cheaper unit price, but when they ended up on the retailer's shelf they bore the same price as domestically produced goods. What are your views on that?

Mr. **Handal**. It is hard to generalize. There will be a panel of retailers who will be more expert than I in answering that particular question.

Our company has another division within the apparel division, footwear, and it is the only case I can think of recently where there was a substantial loosening of the import controls. There were quotas on footwear, and the administration did not renew them last June. So I have a little perspective there of what happened when quotas were eliminated, take the extreme case of actually eliminating them. I can see not only at the prices that our company sells some of the shoes involved—for example, there is a shoe, an indoor-outdoor slipper, and it used to retail when quotas were in existence for $4.99. We would sell it for $2.25 a pair. Now, without the quotas, the import business is a very competitive business, so even if I did not want to reduce the price and try to take advantage of an extra margin, I could not because the competitors down the street were lowering their price. We are now selling that same shoe made the same way for approximately $1.45, $1.50 a pair. It has come down in retail from $4.99 to $2.99. Some people are still selling it at $3.99, for example, but the average price at most stores is $2.99. That is an example where it is clear to me that the import protection hurt the consumer. As it turned out I think the President determined that it did not help the domestic industry, which is why they terminated it, but it did hurt the consumer. The consumer was paying that extra price.

Mr. DANIELS. If I could add to that. The very existence of quota itself prevents the market from going down in the price of imported goods. There are first of all very substantial payments which must be paid to quota holders one way or another in the exporting countries. After all, a quota creates a monopoly, and people do get a monopoly price through quota charges which are either separate or reflected in the price of goods. And these charges can amount to substantial percentages of the final price of the goods.

Second, the sheer limitation of a quota reduces competition among the importers or the imported products as compared to other goods. For example, they have always complained that imported suits are selling at close to or identical to domestically produced suits. Well, the suits are controlled so tightly that the competitive forces simply do not work. I think it is a rule of economics that there can only be one price in the market for identical or comparable goods, and if you restrict one whole source of those goods, I think you find that this is why, in some cases in any event, prices are close.

Mr. HANDAL. But, Mr. Chairman, the point that Mr. Daniels made at first about the cost of quota. This year, 1981, the sweater quota was selling in Taiwan for approximately a little less than a dollar apiece per sweater. If it cost $5 to make a sweater, the manufacturer charged $6, the extra dollar being the monopoly profit of the cost of the quota.

Chairman GIBBONS. Who gets that profit?

Mr. HANDAL. In this case the Chinese businessman.

Mr. FRENZEL. That quota is much greater in Hong Kong, is it not?

Mr. HANDAL. It fluctuates up and down. They publish it in the papers in Hong Kong.

Mr. FRENZEL. I understand it goes to a third of the cost of the garment or to that height from time to time. Does that tally with your experience?

Mr. **Handal**. Yes. Jeans, for example, when they were not were very high.

Mr. **Daniels**. If you control the quantity, one way or another if there is competition for the same goods, whether by quota charge as in Hong Kong where it is formalized or in other places where these are disallowed, it is reflected in the price, because there is great competition to obtain the quota.

Mr. **Frenzel**. The chairman has vivid memories of what the Japanese do to citrus in Japan, getting the price of an orange up to a bushel of oranges.

Mr. **Handal**. That is why orange juice is so expensive when I am in Tokyo?

Chairman **Gibbons**. It is one of the reasons. Let me ask you, the previous witness testified that the U.S. market for textiles and apparel was not growing, was growing very slowly. Is that your view?

Mr. **Handal**. If I might ask Mr. Daniels to reply to that, Mr. Chairman.

Mr. **Daniels**. Mr. Chairman, that is generally true if you take overall measures like fiber consumed in the textile system. It is an average, and the performance of individual products, particularly in the apparel field, is much more volatile. We have had booms in jeans, sweaters, there is a shifting of style factors, so that in any given year, looking at the whole range of apparel products particularly, you will find that consumption rates are all over the place. For example, the wool sweater case that we were making reference to, domestic shipments had actually gone up 26 percent on sweaters generally at the time that the call on China was made. So we would agree with a generalization that overall there has been a 1½-percent growth in the market, but this varies from product to product.

What we are arguing about is that we do not think that a number like 1½ percent which does apply generally should be applied to every apparel product, because consumption is markedly different. Our textile consumption per capita is the highest in the world. We are a mature economy. We consume more in the way of apparel, bedsheets, towels, all the household goods than anybody else in the world. For this reason, our textile industry has turned increasingly to the export market, because there is a vast untapped potential of market in not only the developing countries, but in places like Europe, where their per capita consumption is very low.

We have had remarkable success in those markets. The export market has also made the difference in the performance of the manmade-fiber sector, in our cotton growers as well as our piecegood and yarn manufacturers. So, certainly that is true.

The most important point, and this is where we believe that the committee should understand the underlying basis of this claim for import growth in relation to the market, is that if you do that, you have absolutely frozen the shares of imports and domestic production. Now, this guaranteed market share that this industry wants is something that no other industry in our country has or even dares ask for. I think that is true in automobiles, steel, electronics, all of the other trouble spots. They want their market share guaranteed.

In our view, this market and our economy is dynamic. It is changing, and certainly if an adjustment policy is to be implemented, you have to have a rate of growth of imports higher than the rate of growth in consumption. And we believe that the 6-percent nominal level in the MFA does provide for this kind of adjustment. If you had a 1½-percent rate of growth for imports, you would in effect, given the disparity—you know, imports only have about 15 percent of the market in apparel—you would actually be pursuing a policy of artificially controlled growth for the domestic industry.

Now, we think that this industry simply has to be opened up to competition. We think the MFA is a suitable instrument in that it makes that adjustment gradually. When you talk about rates of growth you are really talking about rates of adjustment. We think that 6 percent is a suitable rate. Maybe it is 5 percent, maybe 7 percent, but certainly the idea that you are limiting imports to the rate of growth of consumption is a policy of freezing and guaranteeing market share, and this is why we object to it, Mr. Chairman.

Chairman GIBBONS. For the record, could you give us some of the prices that these quotas move at per item? Do you have any of those offhand? You heard my tale of woe about this shirt I am wearing. The same old shirt for 40 some years, going from $3.50 to $40. The only thing that has really changed on it is my neck size, and it has grown an inch in 40 years. I do have an extra button on the sleeve that I never figured out why they put on, but it is there anyway. But I remember in 1969, 1970, my kids were getting ready to go off to college and I was having to outfit them in some new clothes. They were bringing home cotton shirts that cost $18 apiece, the same shirts like I was wearing. I was berating them for paying so much, with my World War II mentality with $5 shirts still haunting me, and I got the GAO to make an audit of what was going on, and at that time they reported to me that jeans—I have forgotten what it was on shirts—on jeans there was a $2 quota charge per pair of jeans. Do you have any figures on that now?

Mr. HANDAL. We do not have them with us, but we certainly could obtain them. Jean quota in Hong Kong has been even higher than $24 a dozen at times, and that contrasts by the time you get into the retail price to considerably more than just $2 apiece, because we have to pay duty on it, so that multiplies the effect of the $2, and then it is financing costs and so on and then we sell it to a retailer, he makes a profit margin, and by the time it gets to the consumer it is at considerable cost. We could provide figures on that.

Mr. DANIELS. We also believe that there is something wrong with the consumer and wholesale price index. We have been mystified for years because it has been the common experience certainly of every man shopping for a suit that he used to pay $70 or $65, and now he sees $250, $300 price tags for a suit. We think the problem is that the people who compile the Consumer Price Index are very interested in historical series—therefore, the integrity of their historical benchmarks is a matter of tremendous importance—and that they are picking items, perhaps, although I am not an expert on this, which do not reflect the price rise. But certainly shirts, which every man has to buy, ties, suits, the things that we wear every day have gone up enormously in price, and this simply is not reflected in the Consumer Price Index.

Chairman **Gibbons**. Well, I was not going to bring up the suits because I was an author of one of those terrible puns in here about $300 suits. When I came to Congress I used to pay $75 or $85 if it had not been marked down for a Hart Schaffner & Marx suit. That same suit, not made quite as well, I regret to say, sells for $280, $290, just a little under $300. They shave it enough so I am not yet buying $300 suits, but it is about an $85 suit. It has a few more loose strings in it than it used to have. It has 2 inches more in the waist than it used to have. I do not think it really ought to go up quite that much.

Mr. Frenzel.

Mr. **Frenzel**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Mr. Frenzel is not as old as I am, so he will not have the old stories.

Mr. **Frenzel**. I have a different problem than you do. I am wearing a Korean shirt. It did not cost me 40 bucks, but it does not launder very well, either.

I thank the witnesses for interesting testimony. There are some on the committee that like quotas and some that do not, but all of us are interested in having responsible, transparent, just administrative processes. You have pointed out what I think are great difficulties which we are going to have to go into with greater scrutiny in the coming year and insist that the Department do its job. However, I am mystified by CITA. What is that?

Mr. **Daniels**. That is a mystery. It is called—I never get it correctly, either—it is the Committee on the Implementation of Textile Agreements, or perhaps "for the implementation," and this is a very strange creature.

Mr. **Frenzel**. Does the Department of Commerce handle that?

Mr. **Daniels**. It is very strange. There are four members of CITA: Commerce, Treasury, State, and Labor. STR is not a member; it is an observer. We do not have the Agriculture Department, which has a vital interest in the textile trade. The way this is organized—and I think it is the only place in government—it takes a majority of the committee to overrule Commerce, so that the Commerce Department in effect has a veto power over the actions of that committee. I have never seen anything like it.

Mr. **Frenzel**. Is it a statutory creature or one of convenience?

Mr. **Daniels**. It was established pursuant to executive order. It is chaired by the Department of Commerce, it has the members that I said, and it has this highly unusual to say the least set of procedures. It is not subject to the rules on sunshine. They assert national security rights. We think they are wrong. We have gone to court once, I assume we will be in court again, because we cannot get them to move. We have been discussing this with the administration for about a year. We have told them that we do not want to go to court. We think litigation is one of the more useless activities of mankind, and we have tried to work out proceedings so at least we would know what they were doing and why they were doing it, and have a fair opportunity to comment. We have batted zero. That is what CITA is.

Mr. **Frenzel**. What is AAIE-TAG?

Mr. **Handal.** The American Association of Exporters and Importers. We are the textile and apparel group that is part of the AAEI. Our members are American companies entirely in the United States and some of the support services that work with importing.

Mr. **Frenzel.** I assume that your principal business is importers, despite the tag of exporters and importers?

Mr. **Handal.** No. In the parent group, the American Association of Exporters and Importers, more than half of the members export as well as import.

Mr. **Frenzel.** How many members do you have?

Mr. **Handal.** I am not sure how many AAEI has. A couple thousand. TAG has I think somewhat less than 100.

Mr. **Frenzel.** You guys do support extension of MFA?

Mr. **Daniels.** We support the continuation of the MFA because we think not to support that would lead to much worse results. These negotiations in Geneva really are at a crisis, and we do not want to disturb that process, but it seems to us that it is a reasonable tradeoff given the political realities that we have to live with. We are not happy with it. We think a completely free trade regime would be preferable.

We object to the constant tightening of this instrumentality. The President in his white paper said that he believed in liberalization of trade, and here we have U.S. negotiators pressing not for liberalization of the agreement but for an extreme tightening of it, and it is this movement that we object to.

Mr. **Frenzel.** I am with you. In the best of all possible worlds, I would like a free and open trading system. However, MFA is about as good as we are going to do. As I understand it, our problem does not lie in the United States, but with the European Community.

Mr. **Daniels.** We do not agree with that. If you look at the proposals that have been tabled by Europe and the United States, you will find that they are identical in the areas of growth, flexibility, and some other elements which are regressive, in our view. Europe has three proposals which are absolutely unacceptable to anybody. The United States is fighting against those extreme proposals, but we do not think that should obscure the protectionist and regressive nature of the U.S. proposals.

Mr. **Frenzel.** Thank you very much. That is good information to have. Do you have a position on GSP graduation or GSP's generally?

Mr. **Daniels.** Not as a group. The textile industry lobby was successful in getting all textile products covered by the MFA exempted from GSP. Our parent organization has a position, and we will testify to that during the course of these hearings.

Mr. **Frenzel.** Much obliged.

Mr. Chairman, I yield the balance of my time.

Mr. **Bailey.** I would like to comment on some of the things that you fellows said, because I think they misstate terribly some of the realities I find I have to deal with as a representative of this country. Ideally I would like very much to have things your way, too. It would be very efficient, very nice, and we do pay a price—the remarks were made about some of our capital-intensive industries and our desire for market share. I do not think market share is comprehensive or realistic or fair or accurate. I think that we have paid a price in this country. I suppose because we do not like sweatshops, I guess because labor standards and things like that mean something to us. We have paid a price to maintain a standard of living, and I think you have to look at trade negotiations and trade relations and trade laws in that context. And I think it is just as naive to talk about free trade in the context that you fellows have, and I am just learning in this area.

I do not pretend to have that much knowledge, but from what I can see, it is naive to talk about trade policy in this country in a completely protectionist light. That also is naive, unrealistic, wrong, and would be a mistake. But I suppose if this country could transfer all of its capital and all its technology, then I suppose if we could demand the same kind of labor standards and treatment of people and safety and those kinds of things that we would like to see on the job, then maybe we can talk about comparative advantage if it means something.

I did not hear much of what you said. I apologize if I am overreacting to the brief comments that I caught, but I think you have to put things within that realm. I am no protectionist, but I have seen us unilaterally do things that I think are foolish and unfair in the name of a kindergarten concept of free trade, in my opinion.

Mr. DANIELS. Congressman, we do not think we are in kindergarten, certainly.

Mr. BAILEY. I did not refer to you.

Mr. DANIELS. Those who promote liberal trade policies, actually it does work and we do have a very substantial advantage in our trade in manufactures with the world. Our fastest growing trade is with the developing countries, because their markets are expanding most quickly. I would like to say that we recognize that we are living through a very difficult economic time, and that there are very serious problems of unemployment, dislocation in our country.

Mr. BAILEY. I got ladies back home making $3 and $4, $5 an hour, husbands out of work, they work in the factory. I hope you are aware of that.

Mr. DANIELS. We are aware, but we do feel that we have to begin to move, and this is why we believe the MFA as an instrumentality is that kind of mechanism which provides for gradual movement. What the domestic industry complex here wants is no movement and no adjustment.

Mr. BAILEY. You are Mr. Daniels?

Mr. DANIELS. Yes, sir.

Mr. BAILEY. As I said when I started to comment, you are talking about specific issues; you may or may not be right. I do not want to the disservice of you or the committee drag it out, but I think you know what I was referring to, some of the tangential remarks you made, and those are the things attitudewise I wanted to address in my remarks. Thank you.

Chairman GIBBONS. Let me ask you. Would it not make more sense for us just to have a high tariff on textiles rather than a quota? Why pay some fellow sitting over in Hong Kong for a pair of jeans; why not put the money in the U.S. Treasury?

Mr. HANDAL. Mr. Chairman, I would suggest that our goal is ultimate adjustment to the realities of the marketplace, but given that, we believe that there are some industries that will—that do now compete better in the United States, and overseas will never be able to compete with them. The other extreme, there are some industries here that will never be able to compete with overseas, no matter how much protection they are given. In the middle area there are some industries that with protection for a certain period of time will be able to get on their feet and will be able to compete successfully. Within that framework, it is a personal opinion of mine as opposed to our group, if we were to have protection at a certain level, it would be preferable to have the high tariff with money going to the U.S. Treasury than to have quotas to achieve a given level of protection and have the money going into the pockets of the manufacturers overseas.

Chairman GIBBONS. That is the way the Japanese finance the Liberal Democratic Party over there. It has been laid out in the press. They take the quota money and kick it back to the Liberal Democratic Party in Japan. It is outrageous, and one of these days we will catch up with it. If we have to pay more for jeans in order to protect jean workers, why do we not just put the money in the U.S. Treasury rather than pay it to Hong Kong or that island that makes all those wool sweaters or something else. You know, we must be mad at ourselves if we would impose this silly system on ourselves of quotas.

Mr. DANIELS. We agree, but there is an embarrassment factor with high duties because they are already the highest in the schedules; they were not reduced in the Kennedy round or the Tokyo round. They rank for ornamented apparel in the 30-percent range; for nonornamented, in the 20-percent range; for wool fabrics, they are astronomical. So that I think that we would agree that the tariffs are always infinitely preferable to quotas, because they allow the market to operate in some fashion. But in this area, unfortunately, the tariffs are already sky high, and I think that the domestic industry would be embarrassed to ask for even higher duties.

Chairman GIBBONS. I do not mind embarrassing them. I do not want to embarrass anybody, but I would rather embarrass them than myself. I do not know why we have to pay somebody sitting around in Hong Kong a quota premium.

Mr. HANDAL. One of the reasons I would suggest is that there is a very strong lobby overseas that is not in the interest of us as importers or retailers or consumers, and they are one of the reasons I think why these things exist.

Chairman GIBBONS. Could you get within a reasonable length of time a list of some of these premiums we are paying these foreigners?

Mr. DANIELS. We want to make it clear that it is because the quota is imposed by the United States, which creates a monopoly, then you have quota charges. Just the market operating as it would operate with or without something separate. It is a shortage, and I think that is the root evil that we are talking about, and if some of these quotas were liberalized you would find immediately that quota charges went down. I think this would be desirable from the national interest of the exporting countries as well.

Mr. HANDAL. Last year in February the U.S. Government and Korea agreed to decrease the quota to the United States of sweaters. They did not tell the public about it until September. So the U.S. Government knew about it, but we as businessmen involved in this did not find out about it for months. As soon as it became apparent what was happening, the price of sweater quota that year went from $3 or $4 at the beginning of the year to close to $20 a dozen when the market began to feel the restriction on quotas. If it were to go the other way, the value of the quota would go down and the cost to the consumer go down.

Chairman GIBBONS. And the money for those quotas went in the pockets of Koreans?

Mr. HANDAL. Yes, sir.

Mr. BAILEY. You commented about lobbyists overseas. Be more specific. How does this system work?

Mr. HANDAL. The manufacturers in the countries that we buy from have an interest in having quotas.

Mr. BAILEY. They go through diplomatic channels?

Mr. HANDAL. I did not mean they lobby in the Washington context.

Mr. BAILEY. I understand. Their government. And it becomes a diplomatic type of thing carried on at State Department levels or something?

Mr. HANDAL. I am not familiar with how it would proceed from there, sir.

Mr. BAILEY. You do not have any idea?

Mr. HANDAL. I do not know the inner workings of their government and how that works.

Mr. BAILEY. How does that get translated into American trade policy?

Mr. DANIELS. It should not. That is our point.

Mr. BAILEY. I agree it should not.

Mr. DANIELS. If you have a limited pie and you have to allocate that pie to manufacturers and those manufacturers see that they are getting a monopoly, naturally they will bid for it and charge for it. That is what is so vicious about a quota system. You had the same thing in the oil program, where we actually auctioned off quota. To the extent that we have similar situations either by way of import quotas imposed by the United States and allocated to U.S. citizens, as the dairy system used to be, you are going to find people bidding for quota. They do it all over, because they have a monopoly.

Chairman GIBBONS. Maybe I should explain to the gentleman how they do oranges in Japan, and maybe he will understand how they do shirts in the United States. Japan set a quota on oranges, and the Government passes out the quotas to certain importers. Those importers get their quota, and apparently the more you kick back to the Liberal Democratic Party, the bigger your quota is.

Mr. BAILEY. Their Government sets the quota?

Chairman GIBBONS. Yes. Here our Government is setting a quota, and I am not alleging that on shirts or anything like that that anybody over here is getting a kickback, but the Hong Kong Government, for instance, has to say well, Hong Kong has only got so many shirts they can ship to the American market. Company A, company B, company C, your quota is so and so. You actually have people that own quotas that do not even have factories. They do not even produce the shirts. They just own the quotas.

Mr. **Bailey**. They are brokers?

Chairman **Gibbons**. That is a good clean name for them. And so instead of us putting that in the U.S. Treasury at the premium we are paying them, we are paying it to a bunch of people in Hong Kong and other places that just deposit their money to their own personal account.

Mr. **Handal**. There is another way that we hurt the interests of the consumer in the way the quota is allocated. Many governments also reserve a portion of the quota and tell the factories, those of you who have the highest price for merchandise in this quota category, we will give it to you free. If the average price for a Korean shirt were $25 a dozen and the Government were allocated *x* quantity of Korean shirt quota, they might say give us your bids, give us your orders, and that tends to force the price up, so only those with $38 or $40 a dozen or higher would get the free quota from the Government, and this is another way it hurts the U.S. consumer.

Mr. **Frenzel**. At least we can say that for the Big 3, the quota premiums, whatever they are, are in the open, and they are a biddable commodity. There is a free market in those rights. In Japan, of course, it is a little darker. But let us assume that Singapore or Hong Kong or Korea or Taiwan decided to give quotas by lottery, give nobody a bonus on selling quotas, make them nontransferable. At that point, then the amount of money that the quota would command in the foreign country would be absorbed in a markup in the United States, I assume, because you have a limited amount of supply, and I guess a greater demand, because the demand now will pay the quota premium.

Mr. **Daniels**. Mr. Frenzel, the problem for the governments from the interest of the government is full utilization of quota, and utilization in higher value goods, that is trading up, because that is the way they earn very-much-needed foreign exchange. So that in effect their auction system, which varies from country to country, is the most efficient way to insure full utilization of quota for the highest priced goods. You know, it is not recognized, but in effect the quota system has knocked a lot of cheap goods completely out of the market, because if you have a quota for shirts, for example, and you are a manufacturer of children's shirts, which might be, what, $10 a dozen, you are a darn fool if you continue to make children's shirts. You will move immediately to an adult shirt because the value is higher for the same quota. So that the system of auctioning or selling or the various schemes that are used are designed by the governments involved to provide full utilization.

Mr. **Frenzel**. Or the manufacturers. It is not true with Japanese automobiles, but we restrict them by their agreement. Japanese automobiles are coming into this country and they can only ship so many. They begin to upgrade what they ship, and the price to the consumer becomes greater as it did despite a weakening market. They ship better stuff and more accessories. That is a common phenomenon.

Mr. **Handal**. The situation you suggest existed in Taiwan in footwear. While the Government did make it illegal and nontransferable to transfer a quota, it simply did not work. It was my understanding that it operated almost as openly in a black market situation there as it does quite legally in other countries.

Mr. **Frenzel**. Thank you very much.

Chairman **Gibbons**. At this point we will reserve space in the record if you can supply us what some of these quotas cost.

Mr. **Handal**. Yes, sir.

Chairman **Gibbons**. Thank you very much.

Mr. **Handal**. Thank you, Mr. Chairman.

Mr. **Daniels**. Thank you, Mr. Chairman.

Chairman **Gibbons**. I always learn something every day.

[The following was subsequently received:]

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS,
New York, N.Y., December 24, 1981.

Hon. SAM M. GIBBONS,
Chairman, House Ways and Means Committee,
Subcommittee on Trade, Washington, D.C.

DEAR CONGRESSMAN GIBBONS: this letter is in response to your request at last weeks hearings for specific data on the cost of quota, and is submitted for inclusion in the record. Also for the record is the attached list of some quota premiums for Hong Kong, Taiwan, and Korea, stated in U.S. dollars per dozen. The quota premiums shown reflect the range during 1980 for related apparel products and the average premiums for the Fall of 1981.

Quota costs from other suppliers exist but are not as well defined as those from Kong Kong, Taiwan, and Korea. Some quota costs are based on export quota allocations according to minimum export prices, others are allocations based on inflated prices per quota goods with discounts on non-quota merchandise. These latter costs are difficult to assess at this time, but certainly can be viewed as a "charge" for purchasing quota goods.

The attached quota premiums reflect not only the relative scarcity of quota for a particular product from a particular source, but also the change in demand for that particular product during the course of a quota year, and the availability of similar quota from other suppliers. For example, wool sweater quota in Hong Kong which at the start of the China embargo was $48.00 a dozen, fell to $33.00 a dozen in June of 1981 and further eroded later in 1981 (it has been reported at $15.00 per dozen).

From these examples, it is not surprising that importers seek increased quotas and increased flexibility in utilizing quotas. We feel this would increase the competition among suppliers (both current and new) without necessarily increasing the amount of goods supplied. We do not believe reducing quota availability will reduce imports, but feel it will amount to an increased subsidization of apparel production in non-competitive mostly foreign suppliers into the U.S. market is aided by the inability of U.S. producers to satisfy U.S. demand as well as the U.S.-imposed restrictions which artificially boost prices making production of apparel in these new areas economically attractive.

Sincerely,

PETER V. HANDAL.

Enclosure.

QUOTA PREMIUMS FOR SELECTED PRODUCTS

Country	Category	Description	Quota Premiums		
			1980		Fall 1981
			High	Low	
Hong Kong	347/348	Cotton trousers	$50	$9	$17.00
	340	Cotton shirts	7	4	5.00
	341	Cotton blouses	5	2	7.50
	436	Wool dresses	NA	NA	17.00
	445/446	Wool sweaters	49	15	27.00
	640	MMF shirts	4	3	2.00
	641	MMF blouses	44	12	19.00

QUOTA PREMIUMS FOR SELECTED PRODUCTS—Continued

Country	Category	Description	Quota Premiums		
			1980		Fall 1981
			High	Low	
Taiwan	333/334/335	Cotton coats			50.00
	338/339	Cotton knit shirts	15	10	7.00
	340	Cotton shirts	5	2	4.00
	340	Cotton blouses	7	3	18.00
	445/446	Wool sweaters	12	3	12.00
	663/634/635	MMF coats			40.00
	640	MMF shirts	2	0	0
	641	MMF blouses	15	3	15.00
	645/646	MMF sweaters	15	3	5.00
Korea	335	Cotton jackets	18	12	
	340	Cotton shirts	5	3	3.00
	341	Cotton blouses	5	3	3.00
	347/348	Cotton trousers	7	3	
	445/446	Wool sweaters	15	10	
	640	MMF shirts	2	0	2.00
	641	MMF blouses	2	0	2.00
	645/646	MMF sweaters	6	2	

Chairman **Gibbons**. Our next witness is Evelyn Dubrow. She is the vice president and legislative director of the International Ladies' Garment Workers' Union. I might say, no stranger to any of us. Ms. Dubrow, we welcome you here, and you may proceed in any manner you wish.

STATEMENT OF EVELYN DUBROW, VICE PRESIDENT AND LEGISLATIVE DIRECTOR, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO, ACCOMPANIED BY HERMAN STAROBAN, DIRECTOR OF RESEARCH

Ms. **Dubrow**. Thank you very much, Mr. Chairman, members of the subcommittee. I have with me Dr. Herman Staroban, director of research for the union. Before I begin my testimony, and I am planning to read only part of it, since the rest is going in the record, and you may have some questions of our research director, I would like to ask permission to enter a statement to reply to some of the matters brought up by the prior witnesses. Mr. Daniels and I are old adversaries.

Chairman **Gibbons**. I thought you were.

Ms. **Dubrow**. I would like very much, since we all believe in the freedom of information, to have the right to also inform the members of the committee where we agree and where we disagree with Mr. Daniels and his organization.

Chairman **Gibbons**. We will be glad to cooperate with you in that regard. I am sure you will not delay in getting your statement filed.

Ms. **Dubrow**. Yes, sir.

Mr. Chairman, members of this distinguished committee, my name is Evelyn Dubrow. I am vice president and legislative director of the International Ladies' Garment Workers' Union, and I am here on behalf of our 300,000 members. May I say, Mr. Chairman and members of this subcommittee, that 8 years ago we had 457,000 members in our union in the United States and in

Canada. One of the reasons our membership has dropped considerably, although not solely for that reason, is the problem of imports and the problem of item 807, on which I intend to testify today.

You have heard the plight of the domestic textile and apparel industry in the face of our mounting imports. You have also heard of the need to renew and strengthen the multifiber textile arrangement. Action on imports is essential to the workers in our industry. As you know, Mr. Chairman, this is a labor-intensive industry employing 2 million workers, so we are not talking about a nickel-and-dime industry in this country. Some 80 percent are women, and in general they are older and have less education than workers in other industries. Many are members of minority groups. Many are immigrants with little or no knowledge of English. These workers want to work, but have few or no job alternatives when their plants close or reduce operations. One of the reasons that they do not have much opportunity is that many of them are not retrainable because of the lack of education, not necessarily in the countries from which they came, but in this country, and I would like also to point out with the reduction in some of our training operations which the Government supplies, it will also affect our industry very greatly.

I will not burden you with further material on this point now, but do ask that my full statement appear in the committee record. I would like to use my allotted time to share our views on the aspect of the import problem that is particularly important to the apparel industry, and that has not been dealt with in general industry testimony. I refer to the loophole in the Nation's tariff schedules known as item 807.

Under this provision, adopted in 1963, manufacturers can cut garments in parts of the United States, ship them abroad for completion into finished garments, and return them for sale in the United States on payment of duty on only the value added in the foreign country, a fraction of real market value.

The savings on item 807 operations are dramatic. Labor costs amount to approximately a third of the wholesale cost of a garment. Since cutting takes up only one-twentieth of the total labor in a garment, the remaining nineteen-twentieths is performed outside the country at wage rates that are a fraction of those in the United States. In 1979, the average U.S. apparel worker was paid $4.24 an hour. In contrast, the apparel worker in Mexico earned only $1.12 an hour. In Haiti, the wage was 63 cents an hour. In Honduras, 28 cents an hour. And in Jamaica, 13 cents an hour. And the rise in imports of garments under item 807 has been incredibly large. In 1965, less than $2 million worth of apparel was brought in under this provision. Last year, the total amounted to $524 million.

Beyond the savings in labor cost, there are two reasons why manufacturers turn to item 807: Quality control, and a shorter production cycle than attainable with regular imports. By cutting in the United States, a manufacturer can make use of the latest fabrics. At the same time, he can maintain a high degree of quality control, since cutting is one of the most important steps in the production process. Thus a manufacturer who can have a garment cut at home and sewn in a low-wage country has the best of both possible worlds, quality control with low costs.

The second advantage is time. Normally it takes 4 to 6 months to have a garment produced abroad and then imported into the United States, but in an industry as dependent on fashion and rapid turnover as women's clothing, goods have a very short shelf life, and manufacturers often cannot afford the time lost in producing abroad.

I would like to say also transportation costs have something to do with this. Item 807 allows many of these manufacturers to take advantage of low-wage foreign labor with little or no loss in time. Shipping pieces for something across the border to Mexico and bringing back finished garments scarcely takes more time than sending the same pieces to Georgia and Florida, Mr. Chairman.

Were item 807 to be eliminated, most of this work would return to the United States. The savings on item 807 work, I hasten to add, are rarely seen by the American consumer. This point was demonstrated most vividly to the subcommittee on March 25, 1976, when President Chaikin of our union presented for the record identical garments made here and abroad. The garments were purchased in the same store and sold for the same price. The savings on item 807 garments obviously went to the middlemen. Item 807 should be repealed. It would close a loophole that has resulted in irreparable damage to American workers, and can only continue to do so.

Mr. Chairman, that ends my formal statement, and Dr. Staroban and I will be happy to answer any questions you or the members of the subcommittee may have.

[The prepared statement follows:]

STATEMENT OF EVELYN DUBROW, VICE PRESIDENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL-CIO

My name is Evelyn Dubrow. I am Vice President and Legislative Representative of the International Ladies' Garment Workers' Union, a union of over 300,000 men and women employed in the women's and children's apparel industry.

The apparel industry has been faced with a steady, continuous, ongoing erosion from imports. We have been living with this problem for over 20 years now, so we know that what we are seeing is not some aberration or temporary setback, but a disastrous and constant fact of our economic life. Unless action is taken that addresses itself directly to the import question, erosion will continue until just about all of the women's and children's garment industry in America simply disappears.

Let us look at some of the figures on import growth. In 1961 our country imported 314.1 million square yards equivalent of cotton, wool or man-made fiber apparel. By 1965 such imports had more than quadrupled—to 684.1 square yards. Apparel imports reached 1.8 billion square yards in 1970, 2.1 billion in 1975 and 2.9 billion in 1980. And this year, in the midst of economic difficulties, we are importing at a faster pace than last year.

There is simply no way that the American market for apparel could have matched the astounding pace of import growth. Imports do not create new markets for themselves. Instead, they take part of the already-established American market. Where in the mid 1950's only 4 garments were imported for every 100 made here, today over 50 garments are imported for every 100 made at home.

What this means for American workers can be seen in statistics both for total employment and hours worked (Table 1). Between 1973 and 1980, employment in the apparel industry declined by 15.1 percent. A further drop is taking place in 1981. Hours worked in the industry tell a similar story. American garment workers are today putting in fewer hours than at any time since 1961.

Who suffers from this job loss? They are workers from the most vulnerable groups in our population, the ones least able to afford disruptions, cutbacks or unemployment. The garment industry is a low-wage sector. Its workers are not highly educated. About two-thirds of all apparel workers did not complete high school; almost one out of five failed to finish primary school. Over 42 percent are 45 years of age or more. About 80 percent are women. The industry is a significant source of jobs for minority-group members.

These are people with few alternative job opportunities. In general, their family obligations and economic circumstances limit their geographic mobility. Should they be unable to find employment in the garment industry, many of them would fall into the ranks of the hard-core unemployed.

It is vitally important for the welfare of our country that the jobs of these thousands of Americans be protected. One crucial direction in which we must move is to tighten the Multifiber Arrangement so that imports of textiles and apparel are more closely related to the domestic consumption. The measures necessary to accomplish this have been spelled out in the detailed testimony on this point submitted on behalf of trade associations and unions in the fiber, textile and apparel industry.

But I would like to focus attention as well on an additional step that we can take to ease the import problem that was not touched on in the more general testimony. That is for Congress to eliminate a loophole in our trade laws—Item 807.00 of the Tariff Schedules of the United States. This provision permits cut garment parts to be shipped out of the country for sewing into finished garments and returned with payment of duty only on the value added abroad. This is a major saving to the importer.

Item 807 was incorporated into our laws in 1963 on a recommendation of the U.S. Tariff Commission. That recommendation followed a Customs Court decision that allowed four Canadian-built boats with American-made motors to enter the U.S. with duty paid only on the boats. Because the motors were easily removable, leaving both engines and boats intact, the Court rules the motors were separate entities whose identity was not lost after they were combined with the boats, and whose value was not increased. The Tariff Commission misconstrued this decision, taking it to mean that whatever value was added was attributable solely to the foreign-made parts. This was not the language of the Court, however, for clearly whatever labor was expended in Canada added to the value of the final product—the boat with the motor—rather than to its component parts.

Nonetheless, on the basis of the Tariff Commission's recommendation, Item 807 was adopted, permitting American companies to export parts for assembly abroad and to reimport the finished products, paying duty only on foreign value added, usually only overhead and labor costs. Since Third World labor is so cheap, this duty is minimal, and wherever assembly is a large part of a manufacturer's cost, Item 807 affords tremendous savings.

Garment workers have been especially affected by Item 807 because 19 out of every garment workers are in jobs involving assembly. Just what a manufacturer gains from Item 807 can be demonstrated by comparing the wages of an American garment worker to wages in countries where Item 807 is a major factor.

In 1979, when a garment worker in the United States earned $4.24 an hour, a garment worker across the border in Mexico earned only $1.12 an hour. In Haiti the wage for a garment worker was $0.63 an hour, in Honduras $0.28 an hour, and in Jamaica $0.13 an hour. These figures do not include the larger fringe benefits the American worker receives, nor the longer hours without overtime pay put in by the Third World workers, nor the costs U.S. manufacturers incur as a result of health and safety regulations.

Apparel is one of the very few examples of a highly competitive industry in the U.S., and with wages and salaries accounting for about a third of the value of a garment, there is always severe downward pressure on wages. The manufacturer who is able to reduce his payroll costs feels he has a better chance to prevail over his competition. Thus, the increase in imports of garments under Item 807 has been nothing short of incredible.

In 1965 the dollar value of imported garments brought into the U.S. under Item 807 was $1.7 million; in 1980 it was $524 million, an increase of 30,724 percent. (Imports of all apparel, by comparison, rose by "only" 939 percent in the same period.) Whereas in 1965 Item 807 imports represented only 0.3 percent of total garment imports, in 1980 they represented 8.7 percent (see Table 2). Today 36 countries ship Item 807 goods to the U.S., compared with only 9 in 1965. The growth of these imports has been a particular drain on our industry and its workers.

What gives Item 807 its particular importance is the fact that goods which enter the U.S. under this provision would otherwise be made in our country rather than imported entirely. There are two reasons why this is so.

First, by cutting in the U.S., a manufacturer can make use of the latest fabrics. At the same time, he can maintain a high degree of quality control since cutting is one of the most important steps in the production process. Thus, a manufacturer who can have a garment cut at home and sewn in a low-wage country has the best of both possible worlds: quality control with low costs.

The second advantage Item 807 offers is time. Normally it takes four to six months to have a garment produced abroad and then imported into the United States. But in an industry as dependent on fashion and rapid turnover as women's clothing, goods have a very short shelf life. A women's dress may be salable for no more than a single season. A month or two lost in production can mean the difference between success and bankruptcy. Many garments simply cannot be imported because they must be sold quickly; the manufacturers cannot afford the time lost.

Item 807 allows many of these manufacturers to take advantage of low-wage foreign labor with little or no loss in time. Shipping pieces for sewing across the border to Mexico and bringing back finished garments takes scarcely more time than sending the same pieces to Georgia. Manufacturers who could not possibly survive if they had to rely on production in Hong Kong or Taiwan are able to realize tremendous savings by importing under Item 807.

Those savings, I hasten to add, are rarely seen by the American consumer who purchases the Item 807 garment. This point was demonstrated most vividly to this Subcommittee on March 25, 1976, when ILGWU President Sol C. Chaikin, during lengthy testimony on Item 807, presented for the record identical garments made here and abroad in countries where Item 807 goods are a major factor. The garments were purchased in the same store and sold for the identical price, even though production costs were much lower for the imported garments. The savings, obviously, went to the middlemen, the retailer or the manufacturer or both, but not to the consumer.

Item 807 should be repealed. It would close a loophole grounded in a long-term misunderstanding that has resulted in irreparable damage to American workers, and can only continue to do so.

TABLE 1.—AVERAGE PRODUCTION WORKER EMPLOYMENT AND ANNUAL MANHOURS APPAREL (KNIT AND WOVEN) AND WOMEN'S AND CHILDREN'S APPAREL INDUSTRIES UNITED STATES

Year	Apparel (knit and woven)		Women's and Children's Apparel	
	Production workers	Annual man-hours	Production workers	Annual man-hours
1965	1,160,400	2,156,300,000	633,100	1,138,400,000
1966	1,198,200	2,205,700,000	641,600	1,145,200,000
1967	1,185,100	2,145,000,000	631,800	1,112,000,000
1968	1,193,900	2,191,400,000	640,400	1,139,000,000
1969	1,195,700	2,174,200,000	641,400	1,130,200,000
1970	1,167,500	2,100,300,000	619,100	1,079,300,000
1971	1,163,400	2,117,200,000	609,100	1,072,500,000
1972	1,205,900	2,196,300,000	625,200	1,104,000,000
1973	1,242,600	2,258,700,000	646,300	1,136,600,000
1974	1,175,900	2,090,400,000	606,700	1,044,700,000
1975	1,063,800	1,883,500,000	557,900	965,900,000
1976	1,123,000	2,030,800,000	586,200	1,031,300,000
1977	1,112,400	1,989,200,000	583,800	1,015,200,000
1978	1,118,000	1,988,600,000	594,700	1,032,100,000
1979	1,082,700	1,919,800,000	580,000	995,300,000
1980	1,054,800	1,883,200,000	558,900	964,700,000

Note: Products of the Apparel (knit and woven) Industry not covered by the data are leather, rubber, and plastic gloves, vulcanized rubber garments and garments made from rubberized fabrics produced in the same establishment, surgical corsets produced in establishments primarily engaged in manufacturing surgical and orthopedic appliances, and artificial flowers. Products covered by the data which are not products of the Apparel (knit and woven) Industry are knit fabrics and fur goods.

Source: U.S. Bureau of Labor Statistics (and estimates of the ILGWU Research Department).

TABLE 2.—IMPORTS FOR CONSUMPTION OF APPAREL (KNIT AND WOVEN), UNITED STATES IN MARKET VALUE IN FOREIGN COUNTRIES [1]

[In millions of dollars]

Period	Total value	Item 807.00 imports	
		Value	Percent of total
1965	$578.2	$1.7	$0.3
1966	628.1	6.4	1.0
1967	687.5	12.2	1.8
1968	863.0	24.0	2.8
1969	1,079.1	40.5	3.8
1970	1,247.7	50.4	4.0
1971	1,502.5	69.5	4.6
1972	1,859.4	95.0	5.1
1973	2,118.5	141.7	6.7
1974	2,313.8	238.3	10.3
1975	2,630.6	253.3	9.6
1976	3,685.6	292.5	7.9
1977	4,338.4	327.9	7.6
1978	5,353.5	418.9	7.8
1979	5,469.4	476.7	8.7
1980	6,007.9	524.0	8.7

[1] Exclusive of customs duties, ocean freight, and marine insurance.

Source: U.S. Bureau of the Census.

Chairman GIBBONS. Ms. Dubrow, item 807 manufacturers in this country tell us that they have to use 807 or their industry would disappear entirely. Obviously you do not agree with that.

Ms. DUBROW. We do not agree with it. We think it is a specious argument, in a sense. We feel very strongly that workers in plants in this country should be paid decent wages and have good working conditions. They also are consumers, and that an industry with 2.2 million workers in it means that they also have to be able to buy the things that we consume. I would like to point out, too, Mr. Chairman, that your State of Florida has been damaged considerably by the number of item 807 articles that have come in, and as you know, the garment industry in Florida is suffering greatly, not only from regular imports, but I would say specifically from item 807, because of the locality of the State.

I think manufacturers who suggest that they would have to go out of business if they did not have item 807 are those who may now even be setting up sweatshops in the United States of America and planning not to follow the Fair Labor Standards Act here. I think you would find a great relationship there between sweatshop manufacturers here and manufacturers who use item 807 in other countries.

Chairman GIBBONS. Are there other questions?

Mr. Frenzel.

Mr. FRENZEL. Mr. Chairman, I want to welcome Ms. Dubrow. She has been a regular and a very helpful witness for this committee. When we had our hearings to which you have recently referred, there was a fair amount of testimony, particularly from an area to which you have already referred. On the border between here and Mexico, the kind of laborers that you are talking about simply were not available on the U.S. side of the border. Can you give us a response to that kind of testimony?

Ms. **Dubrow**. Well, I will say generally, and then I would like to call on Dr. Staroban to be more specific.

Mr. **Frenzel**. Thank you.

Doctor, could you respond to that?

Ms. **Dubrow**. May I say one thing before he does, Congressman Frenzel, and thank you very much for your remarks. I would like to say that there is no lack of employees to work in the garment industry in this country, particularly right now when we in this country are welcoming to our shores not only the regular Hispanic immigrants that we get, we are also, in this country, welcoming perhaps not as well as we might, undocumented workers who have come to our shores escaping from their own countries. On top of that I want to remind you that because of the situation in Vietnam and Cambodia, this country has opened its doors to a number of refugees from those countries, and in each case, particularly where there are women, they find jobs in the garment industry. And if we do not have those jobs, then they will be welfare recipients whether we like it or not. So when anybody suggests that there are no workers in this country to fill the jobs that are available, I would like to say that that is not a truthful statement and that we can prove it, I think, by very specific data, and I will ask Doctor——

Mr. **Frenzel**. Before you do that, when you revise your remarks, if you have any figures, can you give them to us on the people from that part of the world who have come into the industry or into your union or both?

Ms. **Dubrow**. We will make an effort to get you that information.

Mr. **Frenzel**. I realize that will be difficult, and you might not be able to do it——

Ms. **Dubrow**. I think we can do it as far as membership in our union is concerned, but we will try to get the other statistics for you, also.

Mr. **Staroban**. The only item that I would add to what Ms. Dubrow said is that the figures on undocumented workers are virtually impossible to get. The figures that Immigration and Naturalization suggests range from 4 to 6 million such people. That is a very wide range, and if Immigration and Naturalization cannot zero in on a more accurate number, then I think it would be virtually impossible for us to do so. Beyond that I would say that Ms. Dubrow has said everything that I would say on the subject.

Mr. **Frenzel**. In my part of the country there are very few apparel workers left. Those immigrants, the legal, accountable ones, have gone more into electronics assembly, which of course is another 806-807 industry, so we would be assisted if there are any figures that you can find for us.

I want to thank you both for your testimony. I yield.

Chairman **Gibbons**. Mr. Bailey.

Mr. **Bailey**. Thank you, Mr. Chairman.

I want to thank both of you for an excellent statement. Lest there be any misconceptions, you know that I have very few garment workers in my district. I do have a few. However, I do try to monitor what goes on in my district, and I would substantiate the wage rates to which you refer. I do have many more skilled workers. Just to show you another area where 807 impacts, we had a company, and I followed the train of this production, a company that left our area, went to Mexico. In Mexico they began to build valves, went into a training program down there and went through a period of time, trained workers what to do down there, built the valves with supervisory help from here in America. The cost of that labor was 50 cents an hour. There were little or no fringes. Working conditions are not the same.

The valves are fully assembled and tested in Mexico, disassembled, shipped into the United States, reassembled in the United States, and distributed and sold in the United States. We are not doing much for democracy and free enterprise or the plight of any person working in any environment anywhere in the world with that kind of policy. There is no way to defend it.

I would like to thank you very much for the statement. I think it is an excellent one.

Ms. DUBROW. On behalf of my fellow unions that are not here to testify, I say that item 807 and 806 do affect the electronics and steel industries, specialty steel, and I would feel that I was not doing my duty as a representative of the labor movement if I did not put that plug in for both of those unions who may be filing statements with you. I will certainly urge them to do so.

Chairman GIBBONS. We will welcome those statements. Thank you very much for coming today. We always look forward to working with you.

Ms. DUBROW. Thank you.

Chairman GIBBONS. Our next group represents the Labor-Industry Coalition for International Trade. Mr. Howard D. Samuel is the president of the industrial trade union department, AFL-CIO. Lawrence C. McQuade is senior vice president of W. R. Grace & Co. Accompanying the witnesses are Allan Cors, of Corning Glass Works, who is industry coordinator for LICIT; Brian Turner, with the industrial union department, AFL-CIO, who is the labor coordinator; and Alan Wolff, counsel to LICIT.

STATEMENTS OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, AND LAWRENCE C. McQUADE, SENIOR VICE PRESIDENT, W. R. GRACE & CO., ACCOMPANIED BY ALLAN CORS, CORNING GLASS WORKS, INDUSTRY COORDINATOR, BRIAN TURNER, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, LABOR COORDINATOR, AND ALAN WOLFF, COUNSEL, ALL ON BEHALF OF THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

Mr. SAMUEL. Mr. Chairman, Mr. McQuade and I have submitted a statement to the committee. With your permission we would like to have the statement incorporated into the record of the hearing.

Chairman GIBBONS. It will be.

Mr. SAMUEL. You have mentioned that besides Mr. McQuade and myself, we are accompanied by Alan Wolff, who is counsel to the Labor-Industry Coalition for International Trade.

Let me describe the Labor-Industry Coalition. We are an unusual group in that we represent a coalition of labor and business—labor unions and businesses. The list is attached to our testimony and includes about eight or nine unions and eight or nine companies in a variety of industries.

Although we represent a variety of industries and make quite a wide variety of products, we are united in our concern that our trade policy be one which serves the American people in terms of jobs and security on the job and also serves American industry, and one of the cardinal points of our coalition is that we do not deal with sectoral problems, so we are not here to talk to you about individual problems of individual industries, but only about some problems which we see challenging the entire U.S. trade system and therefore the U.S. economy as a whole. And the three issues which we will discuss today are export performance requirements, the competition among governments with officially supported export credits, which relates to our own Export-Import Bank, and the export subsidies of the developing countries.

I might start off by saying that our basic point of view is that today in our international trading system, the methods used by governments to govern exports and imports are far less likely to be tariffs, which as you know have been successively reduced during the course of negotiations in the early sixties and a few years ago in the multilateral trade negotiations, and are now likely to be nontariff barriers. Export requirements are an example of the latter, an issue which hardly existed a few years ago and was little known until about a year ago, when I think our organization first called public attention to the problem of export requirements. Such requirements are barely touched upon by the general agreement on tariffs and trade and are outside the regulatory machinery which normally governs trade between nations.

The export requirements, just to explain very briefly what they are, are used by a number of countries, mostly in the developing world, to require investors in those countries to export an artificially set number or quantity of products out of the country. Typically the quantity is set to equal the amount of components which are imported, either of equal or greater value, so that the developing country gains a larger share of the export dollars.

Since the United States is the chief investor in the world—we are responsible for about 50 percent of all investments made in the world—we are also the chief victim. We are the ones who are mostly sinned against when it comes to artificial export requirements.

We have an example of that with the Mexican decree for the development of the automotive industry. Because of this decree, all vehicle manufacturers in Mexico must meet certain export requirements, and as a result of that, the United States by 1983 will receive between 1½ to 2½ million engines, mostly four-cylinder, from Mexico as a result of the decree, not because of the workings of the marketplace. It is affecting subsidiaries of all three of our corporations, as well as Volkswagen of America and Nissan, which is establishing a truck facility in this country but will be importing many of its engines from Mexico as a result of the decree. The total value of these engines and other auto parts from Mexico will exceed $2 billion by 1983, which represents a loss of job opportunities of almost 100,000 workers.

Mexico is not unique. Brazil also has export requirements, as do a number of other countries.

How do we handle something like this? As I said before, GATT is silent. It has not been covered by our negotiations of the last 20 years. The U.S. Trade Representative, Mr. Brock, has suggested that we establish some kind of an international agreement to provide some sort of international law with respect to export requirements. Now, the problem is, what is our leverage? We are the ones sinned against, but we do not have much leverage to oppose it.

We have made suggestions in our statement regarding the use of section 301 of the trade law, which does give us an opportunity to provide a remedy to redress the problems of unfair trading policies. We suggest a number of potential amendments to section 301 to make it a more effective vehicle of redress. We have also strongly suggested that we take certain other steps with respect to this, one of them to deny GSP benefits to products which are shipped here because of export requirements which would not otherwise find their way here, and also to utilize the World Bank and the International Monetary Fund and authorize our executive directors to those institutions to use those institutions as a means of diminishing the effect of export requirements.

I think you are aware that the U.S. Government has been reluctant to use section 301. In the past that section has not been related to investment problems, it has been related to trade problems. It is hard for me to understand how investment problems and trade problems can be so neatly separated. When we will receive $2½ billion worth of automobile engines and other parts costing us 100,000 jobs, that seems to me as much a trade problem as any other of the kinds of trade problems you are hearing about in these hearings, and 301 is the appropriate vehicle to use to try to change that. Whatever it is, we think the Congress should be taking a strong look at this problem, including possible remedies to improve our leverage to protect ourselves.

With that, let me ask Mr. McQuade to continue our testimony.

Mr. McQuade. There are two other points we would like to raise. First is the Export-Import Bank, the export credits, and second is the subsidies.

Chairman Gibbons. Let me suggest here that since we have a vote on right now, perhaps this would be the appropriate time to break as we are changing witnesses. We will be right back.

[Recess.]

Chairman Gibbons. We are back now and are ready to go.

Mr. McQuade. I am going to take the second part of the testimony. We really have two substantive issues we want to talk about. The first is the Export-Import Bank. Exports are a major source of jobs and economic health for the U.S. economy and we are concerned that inequalities in the marketplace caused by unequal export credit in the form of Government back credits at subsidized rates has a negative effect on the liberal international marketing mechanism.

We believe a desirable goal is that competition for markets should be on the basis of quality and price of product and not on the basis of today's credit subsidies. Subsidies are now a major factor in the international marketplace.

The annual cost of interest subsidies by major OECD countries in 1980 is estimated to be $5.5 billion, and in 1981, the estimates run anywhere from $7.5 billion to $10 billion. In France, COFACE, which is their equivalent of our Export-Import Bank helps finance 30 to 35 percent of French exports.

In Japan, the Japanese equivalent of our Eximbank helps finance 35 to 40 percent of their exports, whereas the U.S. Eximbank finances about 6 percent of ours. Let me tell you how it can work. For 7 years, I was president of Procon, a company in the engineering construction business. We built petroleum refineries and chemical plants. These tend to run to big numbers.

An amount of $100 million is not unusual, sometimes these plants cost $200 or $300 million and even more. We had engineering offices in Chicago, in London, and in Paris, as well as Spain, the Netherlands, and Rio de Janeiro.

In order to get a big construction job overseas, we would help arrange the financing, and the key element of financing was often the Government-backed export credit terms. We would shop COFACE, the French Government-backed financing agency, the Export Guarantee Department, the English agency and Eximbank for the best terms.

Whoever gave the best terms was likely to give us the most effective marketing tool we would have to sell our customer. For example, in selling a refinery in Portugal, a $300 million refinery which I worked on, we offered to supply the customer from whichever of these three countries where we had our engineering capability which provided the best export credit terms.

So in a very concrete way, these export transactions would go to one economy or another based upon the terms of the export credit. So I can tell you from direct experience, it makes a significant difference.

Now, we know that there has been a continuing effort over the years, most recently last October by the Export-Import Bank and the Treasury to try to get the OECD lending agencies to adhere to a set of guidelines which would have the effect of removing the subsidy element among the Government-backed credit agencies, and last October, Mr. Draper and the Treasury representatives succeeded in raising the level of the agreed minimum interest rate by 2½ percentage points.

They were also able to get the other countries to agree to give more comprehensive and earlier notification of so-called mixed credits, where you have one credit at a commercial rate and another at a noncommercial rate and you mix the two together and get an effective rate which is more attractive than the commercial rate.

However, even with that improvement, the Eximbank still has a current rate of 12 percent, with a 2-percent up-front fee, whereas the other OECD countries have now agreed that they will have a minimum of a 10-percent interest rate for their credits to developing countries and somewhere between 11 and 11.25 percent for their exports to developed countries. The Japanese have agreed to a 9.25-percent rate, because that reflects the lower rates in their domestic market.

It is very important from a trade policy point of view that the United States be successful in eliminating these differences in the credit subsidies by the OECD countries and in due course by some of the lesser developed countries, who are also adopting this same technique.

The best tool that we believe you can have in order to accomplish this objective is to keep the present Eximbank strong so that it can push for the collective rates and collective terms agreement which will take away this disadvantage which U.S. exporters face when they go out in the market.

The Eximbank can be used to offset or defeat or neutralize the misuse by other countries of their Government-backed credits and to foster a competitive atmosphere in which price and quality of goods and services are the keys to market success rather than an atmosphere in which credit subsidies determine who gets the job.

The other point I would like to call to the committee's attention deals with the subsidies code and what we call the "commitments policy." The Tokyo round, as you know, developed a subsidies code which the Congress agreed with, and in it the United States gave up under our countervailing duty statute, our system of applying countervailing duties to offset Government subsidies without any reference to whether there was injury within the U.S. marketplace.

That had a lot of appeal to others, and justified the results which we expected to get, and we did get—a subsidies code which seemed to us a decent tradeoff. As other nations adhere to that code and get the benefits of our injury test from it, we are entitled to expect—and indeed the agreement said we would get—commitments from those who adhere to the code that they would reduce and eliminate export subsidies as part of their undertaking when they joined the code and got the benefits of entering our markets subject to our injury test.

What is troubling us today is that the commitments some countries are making really amount to no commitment at all. The incident recently which is troubling us is with India, where the agreement was that they should "reduce or eliminate export subsidies wherever the use of such subsidies is inconsistent with its competitive or development needs."

In other words, what this agreement is really saying is that India should reduce its subsidies when they think they should reduce them. We think that amounts to no commitment at all. We think that such an agreement may have a bad impact on subsequent adherence by others to the subsidies code. The United States and Mexico are currently in negotiations on trade and this will be one of the elements of that negotiation. We strongly oppose having a commitment as meaningless as the India commitment as part of any Mexican agreement concerning the subsidies code.

We understand that Brazil, while having entered a firmer commitment when it adhered to the subsidies code is already indicating that, in light of the India commitment, that it may not be necessary for them to fully live up to the actual text of their pledge.

We think that the Congress should have a role in making sure that the intent of a commitments policy, which in effect you approved when you approved the subsidies code, is actually carried out in practice and is not subverted by arrangements such as the Indian arrangement, which appeared to be a commitment, but which really amounted to nothing.

Those are the two items of importance to LICIT and of importance to trade policy generally which I wanted to touch upon.

[The prepared statement follows:]

STATEMENT OF HOWARD D. SAMUEL, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL-CIO, AND LAWRENCE C. MCQUADE, SENIOR VICE-PRESIDENT, W. R. GRACE & CO., ON BEHALF OF THE LABOR-INDUSTRY COALITION FOR INTERNATIONAL TRADE

Mr. Chairman, we[1] are here today, on behalf of the Labor-Industry Coalition for International Trade, to discuss three trade policy issues of pressing concern to our coalition: export performance requirements, competition among governments in officially supported export credits, and discipline over developing country subsidies.

LICIT, the Labor-Industry Coalition for International Trade, is a coalition of labor unions and corporations that seeks to represent the common interests of American business and American workers in promoting increased, balanced and equitable world trade. As a coalition, LICIT represents the common views of its member organizations but not the total trade policy concerns of any of the participants. A more complete statement of the trade concerns of the labor members of LICIT is contained in the recent AFL-CIO convention resolution on international trade.

We believe our coalition, which has been in existence just over two years now, offers a unique perspective for evaluating the formation and implementation of U.S. trade policy and we welcome this opportunity to present to your subcommittee the views of LICIT on this topic.

In October of this year our member companies and unions approved a LICIT Statement on Trade Policy. The core of these trade policy principles is given in the second paragraph which is sub-titled "An Open Trade Policy Based on Reciprocity Among Industrialized Countries." This paragraph reads as follows:

"The trade policy of the United States Government must reflect today's realities. This means maintaining access to the American market when the conditions of competition are fair and in accordance with international obligations, recognizing that exceptional circumstances may require transitional safeguard measures. However, a liberal trade policy cannot be maintained unless the countries which participate in the world trading system assure open competitive conditions and undertake reciprocal obligations toward their trading partners. While full reciprocity cannot be expected from developing countries, the newly industrialized countries must move toward full acceptance of the obligations of the international trading system."

This statement summarizes the important principles which we believe should form the basis of U.S. trade policy and by which the United States should judge the policy performance of its industrialized trading partners.

What we have described here as a trade policy based on reciprocity is in the tradition of past U.S. trade legislation which contained such goals as securing "substantially equivalent competitive opportunities" for U.S. exporters. However while the United States has been relatively successful in obtaining the removal of tariffs on a reciprocal basis, obtaining reciprocity with respect to many non-tariff barriers and other forms of beggar-thy-neighbor practices has not been as successful.

One reason for this has been that, historically, the pursuit of mutually advantageous trading relationships in the GATT has focused almost exclusively on tariff reductions. The implicit assumption in the GATT was that if tariffs can be reduced, an open trading system will be obtained. While that was a legitimate assumption to make in the late 1940s and early 1950s, it is no longer valid today. The recently concluded MTN negotiations made a good start in addressing non-tariff barriers but there is still a long way to go.

Another reason for the lack of success in obtaining reciprocity with respect to non-tariff barriers and other unfair government trade policies is the absence of effective negotiating leverage on the part of the United States. Quite simply, other countries have a greater degree of government intervention in their economies. Often such intervention can attempt to shift domestic economic problems to other countries.

In negotiations under the auspices of the GATT the United States and other countries, with important developing country exceptions, simultaneously reduced tariffs covering substantially equivalent amounts of traded goods. Each side gave up something (reduction of their own tariffs) in exchange for something else (reduction of their trading partners' tariffs). However with respect to other unfair trade distorting measures, the United States is often in the position of asking its trading partners to give up something (removal of an unfair trade-distorting measure) for which we have nothing comparable to give up ourselves. This problem extends through a whole host of issues now confronting U.S. trade policy, including trade distorting government subsidies to industry, export requirements on foreign investors, restrictions on trade in services and agriculture, and many others.

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[1] Howard D. Samuel is President of the Industrial Union Department, AFL-CIO. Lawrence C. McQuade is senior vice-president of W. R. Grace & Co. They were accompanied by Alan Wolff, counsel to LICIT.

The problem, as we see it, is how to make progress in bringing under control these foreign non-tariff barriers and other unfair distortions of trade while not jeopardizing the progress made under the GATT these past 30 years. In the rest of our testimony we would like to focus on three of these specific trade policy problems: export requirements, competition among governments in officially supported export credits and discipline over developing country subsidies.

These are non-sectoral trade policy issues which are the exclusive and we think unique focus of our coalition. They are trade policy concerns that pertain to no participant's specific interest but to everyone's general interest. They are difficult problems. Unless they are addressed in a timely and effective manner LICIT believes they will threaten to undermine the open trading system for which the United States has worked for so long and persistently and will diminish opportunities for U.S. production and jobs.

I. EXPORT PERFORMANCE REQUIREMENTS

Export requirements are a matter of great concern because of their seriously negative effects on domestic investment, production and jobs. These export requirements are a recent, yet rapidly proliferating and threatening problem. They represent one of the most blatant types of beggar-thy-neighbor policies a country can use to obtain jobs and production at the expense of other countries. However, even a year ago such practices were little recognized or understood. For the past year our coalition has been active in drawing attention to the significance and seriousness of these requirements and we are pleased to have helped bring about public debate and attention concerning this subject.

Export requirements force a company to export a certain amount of its production, regardless of the economics of that action. These artificially generated exports cause trade diversion through displacement of another country's exports or through increased imports into the home country. The purpose of these requirements is clear. A host government uses export requirements to increase the economic welfare of its inhabitants at the expense of the economic welfare of other countries.

This issue is especially important for the United States because we are the home country for almost 50 percent of the world's direct investment. Export requirements placed on U.S. foreign subsidiaries cause the U.S. to lose export opportunities and to be subjected to unfair imports through government fiat.

While the problem of export requirements has attracted increasing attention from the Government, labor and business, progress on bringing these practices under control has been almost nonexistent. Ambassador Brock, in testimony before this subcommittee, indicated that his preferred option to address this problem is to negotiate a multilateral arrangement of some sort to limit these practices. We agree that this may be an appropriate ultimate objective and we would suggest that the objective is most likely to be obtained by increasing the negotiating leverage of the United States.

An important step in this direction would be an improved legislative framework to draw attention to this problem and to enhance our Government's ability to effectively deal with it. Such a legislative framework would bring together a number of proposals which, taken together, would significantly enhance the negotiating leverage of the United States. No single policy instrument can effectively address all of the various manifestations of this growing trade policy problem. What is needed is a set of measures which can be used in various combinations to send a signal to U.S. trading partners that the United States is serious about dealing with the issue and is prepared to take the actions necessary to respond where U.S. economic interests are threatened. Legislative measures to achieve these objectives would include amendments designed to:

Clarify Section 301 to provide access to remedies for U.S. interests that are affected by such measures;

Deny GSP benefits, as LICIT has proposed, to the products which are exported to the U.S. as a result of export performance requirements and adversely affect U.S. firms and workers;

Direct the U.S. executive directors of the IMF and World Bank to seek to have these institutions address themselves to the use of export performance requirements in the country policy reviews which they conduct;

Support U.S. Government and private actions to use international dispute settlement mechanisms to resolve export requirement problems;

Support a legislative mandate to encourage international negotiations on the subject of export performance requirements.

Section 301

Section 301 of the Trade Act of 1974, as amended, was intended to give private parties the right to obtain redress against foreign unfair practices. The authority under Section 301 gives the President the ability to respond to such practices in a variety of ways, including the suspension of U.S. obligations under international agreements and the imposition of restrictions or fees on the goods or services of the country maintaining the unfair practices.

Although Section 301 has proven its effectiveness in certain limited circumstances, it has not been as helpful as it might be in addressing export requirements. Section 301 provides a framework and a promise for addressing unfair foreign trade practices. The promise has not been fulfilled with respect to export requirements. This has been due to the fact that the Administration has been hesitant about using Section 301 to address unfair trade practices in general. In addition, there have been questions raised regarding the applicability of Section 301 to what might be characterized as investment problems—as opposed to problems which are directly trade-related or have been traditionally seen as such. Finally, there are a number of procedural improvements in Section 301 which would improve the fact finding and decision-making process under Section 301.

Legislation could address each of these specific defects in the current statute:

1. Congress could express its sense that the Admininistration should exercise its power of self-initiating Section 301 cases with respect to such problems as export performance requirements.
2. Export performance requirements could be explicitly referred to in Section 301 as practices for which Section 301 provides a remedy. Consideration could also be given to providing the President the authority to fashion an investment-related response to investment-related export performance requirements.
3. Procedural changes in Section 301 could be made to improve the fact-finding and decision making process.
4. A preliminary determination reached several months into the investigation could be required.
5. A final determination in any 301 case could be made by the U.S. Trade Representative, subject to review by the President if desired by any cabinet officer having an interest in the matter.

Congress could express its sense that Section 301 should be used more aggressively to confront export requirements. In particular, the Administration should exercise its power to self-initiate Section 301 cases. Self-initiation would have the advantage of placing the U.S. Government out in front against measures which affect broad segments of the national interest and avoids the serious problem of potential retaliation which effectively deters private interests from filing cases on their own.

Explicitly including export requirements within Section 301 coverage would be another important change. A similar step was taken in the Trade Agreements Act of 1979 when specific provision was made for foreign practices which violate the international agreements concluded in the Tokyo Round of trade negotiations. Consideration could also be given to the wisdom of providing additional authority to allow the President to fashion investment-related responses to investment related export performance requirements.

The U.S. Government, in broadening the application of Section 301 to cover these unfair practices, could also actively support private parties who make a Section 301 complaint. This is especially important in order to counter potential, or threatened, host government retaliation against a firm which makes a complaint against that government.

Procedural changes in Section 301 should focus on the fact-finding and decision-making processes. Particularly serious is the problem of collecting facts in cases in which the foreign party refuses to appear or be represented. We believe that it would be helpful if private experts would be available to the Section 301 Committee reviewing the case in order that special expertise might be at hand. Appointment of a surrogate to present the case for the foreign government should also be considered in cases in which the foreign government refuses to appear. The Department of State would be a logical choice for this role, because it tends to play that role in the Committee's decision making in any event.

The Section 301 process would also be improved significantly by requiring or permitting a preliminary determination during the course of the investigation, presumably after the initial review and consultations with the foreign government. As is the case with other unfair trade practice statutes, this preliminary determination would serve to focus the investigation and would significantly improve the chances of a negotiated settlement in cases where the foreign government questioned the seriousness of U.S. resolve to address the problem.

By providing for a final determination in a Section 301 case by the USTR, subject to Presidential review if desired by any cabinet officer having an interest in the matter, decisions are more likely to be made for commercial reasons as opposed to foreign policy or other reasons. Moreover, the negotiating position of the USTR with foreign governments would be significantly strengthened.

GSP

The Generalized System of Preference allows the products of developing countries to be imported into the United States at zero duty rates. There are a myriad of problems with the present GSP system which we have addressed elsewhere. In this context, it is ironic that this special privilege is accorded without regard to whether the imported products have been subject to export requirements when adverse effects are felt by American firms and workers. Where this happens, the United States in effect facilitates and supports a practice which is fundamentally inconsistent with an open trading system. Such unfair policies directly undermine U.S. industry and jobs, and thus erodes domestic support for the program.

At a minimum, GSP benefits should be denied to products which enter this country as a result of export requirements and adversely affect U.S. interests. More broadly, consideration should be given to denying GSP benefits to a country which imposes export requirements at great cost to the economic interests of U.S. firms and workers. Legislation along these lines would create a disincentive against the use of export requirements, similar to the provisions in existing law which deny GSP benefits to countries which improperly expropriate U.S. investments, harbor international terrorists and grant reverse preferences.

International financial institutions

The international financial institutions (e.g., the International Monetary Fund, the World Bank and regional development banks) exercise a significant influence over developing country policies in their decisions regarding the terms and conditions for loans and financial assistance. Moreover, the influence of these institutions goes beyond the multilateral aid which they channel to developing countries; private commercial lenders look to these institutions for guidance in their lending policies toward developing countries.

In light of their critical role, the United States has consistently sought to influence the decision-making in the international financial institutions to reflect its concerns about sound economic policies in developing countries. In some cases, legislation directs the U.S. executive director to vote against loans to countries in certain circumstances, such as when the recipient improperly expropriates U.S. investments.

Either by legislation, if necessary, or as part of a consistent and publicly stated Administration policy, the U.S. Executive Director should be instructed to use his influence to have these institutions discourage the use of and try to eliminate export requirements where the country in question employs these measures.

International dispute settlement

Export requirements should be regarded as fundamentally inconsistent with the principles underlying the GATT.[1] In this light, it is surprising that a greater effort has not been made to bring these practices under the discipline of the GATT. This neglect of U.S. rights has encouraged the belief that export requirements are consistent with international trade rules. Legislation could help in dealing with this problem by expressing the sense of the Congress in support of U.S. Government and private actions to use international dispute settlement mechanisms to defend U.S. rights under existing international law.

International negotiations

The persistent efforts on the part of the current and previous Administrations to interest other countries in negotiations in the GATT with respect to such trade-related investment problems have failed to arouse interest. This does not mean that an improved international framework is unnecessary or undesirable. More likely, it is an indication that other countries prefer to retain their flexibility to act, often at the expense of other countries, as long as other countries continue to acquiesce in these practices.

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[1] LICIT, "Performance Requirements" (March 1981), pp. 19-25.

A legislative mandate to encourage international negotiations on this issue would be an important step in the context of an overall restructuring of national policy, especially if dispute settlement procedures prove inadequate to deal with this problem. Other countries are more likely to recognize their interest in negotiations if the United States can convince them that it intends to act to defend its interests.

LICIT believes that the legislative proposals on export performance requirements outlined above should be given serious consideration by the Congress as a means to help Ambassador Brock realize his objective of negotiating a multilateral arrangement to limit the use of export requirements. We believe these legislative actions would send a clear signal to our trading partners about the U.S resolve on this issue. LICIT will be working closely with members of the Congress to develop these legislative proposals into a specific legislative initiative.

II. OFFICIAL EXPORT CREDIT COMPETITION

LICIT believes that exports from various countries should compete on the basis of quality and price, not on the basis of differences in official export credit subsidies. However, in face of current official export credit competition from other countries, the activities of the U.S. Export-Import Bank must be supported as a means of supporting American export sales, maintaining job opportunities for American workers and providing credible leverage for future export credit negotiations. While the proposed reduction of the Exim Bank is only one of the potential budget cuts of concern to individual menbers of LICIT, it is obviously one that is important to our trade policy interests.

The Export-Import Bank is an essential element in the U.S. response to the competitive challenge from our foreign trading partners, particularly in the high technology and capital equipment sectors. Other countries are not standing by idly as the United States reduces further its already relatively modest commitment to export financing. Relying on heavily subsidized export credits, our foreign competitors are challenging American leadership in such key sectors as heavy electrical equipment, construction equipment, telecommunications, computers and commercial aircraft—sectors which provide work for thousands of subcontractors and jobs for millions of American workers. If our export position in the high technology industries and the growing markets of developing countries is lost, we will be hard pressed to gain it back. The U.S. Government should make further targeted use of Exim Bank resources and take other countermeasures until the U.S. goal of negotiating the elimination of the subsidy element in official export financing is achieved.

The Administration made some progress last October in the OECD Arrangement of Guidelines for Officially Supported Export Credits. This included raising the interest rates under the arrangement by up to 2.5 percentage points and by expanding the notification requirements with respect to mixed credits. However laudable the Administration's efforts were, U.S. exporters still do not have access to financing at competitive rates. The lowest rate the Exim Bank now charges is 12 percent, with a fee of 2 percent up front. This compares with the minimum rates in the OECD arrangement of 10 percent for developing countries and 11 to 11.5 percent for developed countries. Thus, American exporters are still faced with the possibility of losing contracts, but now by only a 2 percent rather than a 4 percent interest rate differential. One of the ironic outcomes of such an arrangement is that other countries may not have to spend as much money to win contracts at the expense of U.S. suppliers.

All evidence indicates, and the Administration agrees, that the subsidy element in official export credits is expanding. The annual cost of interest rate subsidies paid by the major OECD countries is estimated to have been at least $5.5 billion in 1980. The Administration has estimated that the cost in 1981 could reach $7.5 to $10 billion. However the problem is not just with the developed countries like France, Japan, West Germany, and the United Kingdom. It is spreading to developing countries. A recent World Bank report indicated that such newly industrializing countries as Brazil, Korea, Mexico, Portugal, Singapore, Taiwan and Yugoslavia have well-developed export credit financing systems. For example, the Korean Export-Import Bank provides foreign currency loans for about 70 percent of the value of an underlying export contract at a fixed rate of 8 percent per annum for repayment periods extending up to 10 years. A number of other developing countires are beginning to offer, or are planning to institute, programs of insurance coverage and subsidized financing for exports. Among these are Jamaica, Panama, Bangladesh, Turkey, Philippines and Morocco.

Representatives of the OECD countries will meet again next March to attempt to make further progress in reducing the subsidy element in official export credit financing. The United States has been the only country which has consistently sought to bring this subsidy practice under international discipline. However the prospects for further significant progress do not appear to be great because the Administration and the Congress are reducing the only real leverage the U.S has in these negotiations—a strong Export-Import Bank. We will not convince these other countries to cut back on their subsidization through moral suasion and appeal to sound economic principles. The United States must be willing to defend our export position, and the employment dependent upon it, from unfair financing practices of other countries. Only then will they see it in their interest to come to a common understanding to eliminate official export credit subsidies all together.

At the March negotiations, the United States should press to have the OECD Arrangement go to market rates and market terms. Such a system would allow U.S. exporters to compete on the basis of quality and price. We are confident that under such circumstances of fair competition, U.S. products would maintain a healthy share of international markets. In addition, doing away with the subsidy element in official export financing would avoid giving further encouragement to new foreign production in sectors such as steel and textiles where world excess capacity already exists and at terms more favorable than what is available to domestic producers.

Until such an agreement is reached the United States should maintain a strong Export-Import Bank and provide support for U.S. exporters against subsidized export credits provided by other governments. In addition, the U.S. government should look into the possibilities and institutional requirements of a system of financing export transactions in whatever currency an exporter would choose. This study would be related to the one currently being undertaken with respect to access to financial markets for export financing of commercial jet aircraft. LICIT will be examining this topic in the next month and we intend to report our findings to the Administration and other interested parties.

III. SUBSIDIES CODE COMMITMENTS POLICY

LICIT is concerned that the U.S. government no longer appears to have a commitments policy with respect to developing country accession to the subsidies code. For developing countries, undertaking to reduce and eliminate their export subsidies over some definite timetable must be a necessary precondition to receiving the benefits of the code. The recent U.S. acceptance of a commitment from India amounts to no commitment at all. India agreed to "reduce or eliminate export subsidies whenever the use of such subsidies is inconsistent with its competitive or development needs." Such an agreement calls into question the commitments policy and raises serious implications for future negotiations with such countries as Mexico and past commitments already reached with countries like Brazil. We understand that Brazil has just recently indicated, following the U.S. agreement with India, that it no longer intends to adhere fully to the commitments it gave the U.S. last year on reducing and eliminating its export subsidies.

At stake here is the U.S. government policy on trade relations with developing countries. LICIT has been an active supporter of the traditional U.S. position that full participation in the international trading system entails obligations, as well as benefits. We have strongly reminded the U.S. negotiators that part of the political consensus that enabled passage of the Trade Agreements Act and the MTN agreements was a commitment by the Administration that the injury test for countervailing duties would not be accorded to countries that refuse to undertake meaningful commitments on export subsidies.

The real issue is how do we bring greater discipline on foreign subsidy practices. Our countervailing duty law is nothing more than a mechanism to deny countries the benefits of their subsidies when selling into the U.S. market. Far from stopping trade, the law ensures that foreign products compete in this market without unfair advantages over U.S. goods or other imported goods competing on a fair basis. Countervailing duties are not protectionist. They are internationally recognized devices to prevent unfair conditions of competition in international trade.

The United States and Mexico have already begun preliminary discussions concerning Mexico's accession to the subsidies code. Granting Mexico an injury test without requiring a commitment to the elimination of export subsidies, as was done in the case of India, would condone Mexican intervention in trade and would confirm the views of those in Mexico who spurn full participation in the international trading system and favor operating unrestricted by internationally agreed rules.

LICIT does not want the Indian "commitment" to be regarded as a model for negotiations with other countries. We believe in doing something now to halt this erosion of the subsidy code commitments policy. We strongly urge the Trade Subcommittee to devise appropriate legislation to enhance the Administration's ability to negotiate the phasing out and elimination of direct export subsidies in developing countries. One legislative proposal has already been introduced in the Senate by Senator Heinz (S. 1511). The time is short for action because preliminary discussions have already begun with Mexico on this issue.

Mr. Chairman, that ends our prepared remarks. We will be happy to answer any questions the subcommittee might have.

LICIT STATEMENT ON INTERNATIONAL TRADE

The Labor Industry Coalition for International Trade seeks to represent the common interests of American workers and American business in promoting increased, balanced and equitable trade among all nations of the world. Without reference to outdated slogans of "free trade" and "protectionism," LICIT supports open, fair competition for foreign products in the United States market and for American made products in foreign markets.

AN OPEN TRADE POLICY BASED ON RECIPROCITY AMONG INDUSTRIALIZED COUNTRIES

The trade policy of the United States Government must reflect today's realities. This means maintaining access top the American market when the conditions of competition are fair and in accordance with international obligations, recognizing that exceptional circumstances may require transitional safeguard measures. However, a liberal trade policy cannot be maintained unless the countries which participate in the world trading system assure open competitive conditions, and undertake reciprocal obligations toward their trading partners. While full reciprocity cannot be expected from developing countries, the newly industrialized countries must move toward full acceptance of the obligations of the international trading system.

IMPLEMENTING A NEW NATIONAL TRADE POLICY

U.S. rights in the international trading system must be vigorously upheld. The United States Government must enforce both the letter and the spirit of U.S. trade laws, including the 1979 Trade Act, and the international agreements that this Act approved. Particular attention should be given to implementation of the subsidies code.

The U.S. Government must take effective action against beggar-thy-neighbor investment policies imposed by foreign governments. Export performance requirements must be a major concern because they result in a direct transfer of investment, jobs and production to the country imposing them, in a manner unrelated to international comparative advantage. This problem requires immediate attention by the United States and other GATT countries as it threatens to undermine the system of fair and open trade established by the General Agreement on Tariffs and Trade (GATT).

Exports from various countries should compete on the basis of quality and price, not on the basis of differences in official export credit subsidies. In the face of current international export credit competition, the activities of the U.S. Export-Import Bank must be supported as a means of promoting American exports, thereby increasing employment opportunities for American workers. The U.S. Government should make further targeted use of Exim Bank resources and take appropriate countermeasures until the U.S. goal of negotiating the elimination of the subsidy element in export financing is achieved.

The Generalized System of Preferences (GSP) must be reformed. The GSP program is currently providing the most assistance to those developing countries needing it least. Of 140 countries in the program, the top 5 beneficiary countries received about 65 percent of the benefits. Where preferential treatment is no longer required, developing countries should compete in the international economy on an equal basis with other countries. Due regard to sensitive industries in the U.S. should be given in the administration of the program.

The non-market countries require special attention because of the completely different basis of resource allocation, pricing and marketing decisions in their economies. Proper ways for carrying out trade relations with state-owned or state-controlled enterprises must be developed when market concepts of comparative advantage and factor costs are inapplicable.

The trade policies recommended above must be complemented and supported by domestic economic policies that enhance U.S. export competitiveness and promote conditions in which adjustment to international economic changes are both socially equitable and economically efficient. Further domestic policy initiatives will be needed if U.S. firms and workers are to benefit fully from an open international trading system.

LICIT'S ROLE

International trade can achieve the goals of increasing employment, raising levels of real income and expanding the production of a diversified range of goods and services. LICIT will actively work to support and encourage responsible trade policies based on the principles and objectives outlined above to realize these goals. This effort is needed if an open and fair international trading system is to be created and maintained.

LICIT LABOR INDUSTRY COALITION FOR INTERNATIONAL TRADE

Bethlehem Steel;
Amalgamated Clothing and Textile Workers Union;
Communications Workers of America;
Corning Glass Works;
International Union of Electrical, Radio and Machine Workers;
International Brotherhood of Electrical Workers;
American Flint Glass Workers Union;
The BF Goodrich Company;
Industrial Union Department, AFL-CIO;
Ingersoll Rand Company;
International Ladies' Garment Workers Union;
International Association of Machinists and Aerospace Workers;
United Paperworkers International Union;
United Rubber Workers of America;
St. Joe Minerals Corporation;
United Steelworkers of America;
W. R. Grace & Company;
Westinghouse Electric Corporation;
Weyerhaueser Company.

Chairman GIBBONS. I want to thank both you gentlemen for your interesting testimony. You have raised some points in my mind that I want to discuss with you. First of all, I am disturbed to hear about Mexico's performance requirement on automobile engines. That seems to me to immediately violate our law.

I realize that Mexico for its own reasons is not a member of GATT, but that should not work to Mexico's advantage, it ought to work to Mexico's disadvantage. I don't know why we are not using section 301.

In fact, I am going to ask the staff to prepare a letter for me and any member who wants to, may join me, to protest very vigorously that we are not using 301 type of actions on this performance requirement for automobile engines laid down by Mexico.

It would also seem to me that you could make a countervailing duty case out of it. There has to be some kind of bounty that the Mexican Government has given to these manufacturing companies that would require them to export a part of their production. They didn't do it prior to this requirement, so it seems to me that there is some kind of bounty involved. So I am going to ask the staff to also prepare a letter to the proper authorities of this Government to try to find out if there is not some kind of bounty involved in this.

What other way can we attack these kinds of nefarious practices? You know, I think that they are just a sophisticated form of unfair trade practice and bounty, a sophisticated type of dumping, really, perpetuated upon us.

What else can we do?

Mr. **Samuel**. I mentioned two others, the restriction of GSP privileges and also the use of the World Bank and the IMF. I wonder if I could call on our counsel, Alan Wolff, to respond further.

Chairman **Gibbons**. We would be delighted to hear from him.

Mr. **Wolff**. One of the problems with respect to performance requirements is that they are not public generally, although the Mexican decree is a public document and the Brazilian computer plan is a public document.

By and large the requirements on specific companies are between that company and the host government, so that no one knows about it.

Chairman **Gibbons**. Couldn't we pass a law to require them to disclose any type of thing like that?

Mr. **Wolff**. One could. Personally, I think that one has to proceed cautiously not to burden U.S. business unduly in terms of its competition with foreign business. It is a difficult problem. I think you have pointed to several things that can be done in the near future. One of these is the use of countervailing duty cases, which can be self-initiated.

Section 301 cases can also be self-initiated. Queries can be initiated by the U.S. Trade Representative, although none have been.

The World Bank and the International Monetary Fund are not without influence, and they do review country policies, both in connection with specific loans, but also annually on a general basis. They can influence policy. There is no global recognition that there is anything wrong with Government intervention of this kind. As a matter of fact, Canada and France and Belgium and Spain are some of the more developed countries which impose performance requirements.

Chairman **Gibbons**. We are going to start a global recognition of it right now.

Mr. **Samuel**. Good.

Chairman **Gibbons**. At least this member is.

Mr. **Bailey**. Would the chairman yield?

Chairman **Gibbons**. Certainly.

Mr. **Bailey**. This is music to my ears. If the chairman would also be aware that there are some questions about Canada in relationship with automobile companies along these lines. Maybe the group would like to respond.

Chairman **Gibbons**. I have never heard that there was an export requirement on automobile parts. We have an agreement and the Canadians say it doesn't work well enough for them. I point out if you didn't have an auto agreement you probably wouldn't have an auto industry there, because it can't survive in a market that small. I don't think it is an unfair trade practice.

Mr. **Wolff**. The distortions created by the Canadian agreement with which I am familiar, were created in the 1960's. I suggest that emphasis be placed on heading off distortions in new areas, such as Mexico and Brazil, which are imposing new requirements now.

I do not believe that if the Canadians now repealed the side letters that went along with the auto pact that plants would be closed or that there would be major differences in trade between the United States and Canada.

Mr. **Bailey**. I don't want to take the chairman's time, so when we get to my time——

Chairman **Gibbons**. That is all right. Interrupt at any time. It seems to me that these export requirements are thinly disguised forms of bounty or subsidy. There has to be some quid pro quo for it, and I classify them as such in my own opinion.

I am going to urge the USTR office to move vigorously on the Mexican practice and any others where we know about these things.

Why are we treating India so nice?

Why have we bent over backwards for India?

Mr. **McQuade**. I suspect the reason is that we had previously bent over backwards for Pakistan and at that time I believe we did so because the Pakistanis were important to us politically, because the Soviets had just come down into Afghanistan and we wanted deeply to have a good relationship with the Pakistanis. The executive branch apparently believes that you can't treat the Indians more harshly than the Pakistanis. That is why we think it is important to do something to forestall this trend becoming the de facto way of life instead of what was contemplated when the Congress confirmed the results of the negotiations.

Chairman **Gibbons**. Mr. McQuade, I assume that you don't really endorse this agreement that we have on export subsidies? I guess you figure it is better than nothing, but it is still not much. I am talking about the agreement we now have on export credits.

Mr. **McQuade**. The totality of the competitive area includes not only interest rates, but terms, and that includes the length of the credits which are offered. As long as the Export-Import Bank has large sums of money available to it, we have by and large been able to give longer term credits than some of the European countries, so by use of that technique we have sometimes had the whole Eximbank package turn out to be equal or superior. What I dislike is a situation where our companies must compete on the basis of unequal financing terms. To move the interest rates up is desirable, but only part of the story. If you are not going to get all the way to a situation where there is no subsidy element or the subsidy elements are the same, then I think that the United States must have a strong Eximbank, so that we can be competitive.

I am sorry to give you a complicated answer, but I think the increased rates under the OECD arrangement are an improvement without totally eliminating the problem. Our goal should be to do away with the problem. If we can't do away with the problem, we would like to diminish it.

Chairman **Gibbons**. Do you think it is possible to have an international agreement on credits?

Mr. **McQuade**. We have an agreement. I personally feel that there is going to be some slipping away from it in actual performance from time to time, and that it will always be imperfect and imperfectly observed.

Chairman **Gibbons**. Can't we have some kind of a GATT agreement to be monitored a little better than this OECD arrangement?

Mr. **McQuade**. I am not sure how that would work. In theory, Mr. Chairman, I think that is right. But frankly, it is just a question of judgment and I am not sure anybody knows. The issue tends to be settled and discussed in financial circles rather than trade circles, although I think the goals are the same. I am skeptical that we are going to end up with a perfect solution.

The GATT might be a help, but that would be a matter of judgment and I don't have any strong belief.

Chairman **Gibbons**. Other questions?

Mr. **Frenzel**. Mr. Chairman, I want to thank the witnesses for their excellent testimony. I think they have highlighted a couple of important areas. I particularly appreciate your spotlighting just a few things instead of running through the gamut of trade issues. I must tell you that I am inclined to agree with the testimony on export performance use of 301, GSP and the other, which is a persuasive exercise in the international financial institutions as being good policy and useful testimony.

With respect to your testimony on Eximbank, is your group supporting the Heinz and Neal bill, the so-called war chest financing for Eximbank?

Mr. **McQuade**. I think we feel that they would be useful.

Mr. **Frenzel**. Thank you very much. One other question.

With respect to the injury test, the subsidy code and so on, your counsel will recall that we had achieved almost the same kind of agreement with India a while ago, and we on this committee advised then-STR that it was unsatisfactory. We asked him not to go forward with it, and he did at that time hold back.

We then reread the subsidy code and the MTN agreement and decided that with what we agreed to and with what the rest of the world had agreed to, it would be very difficult to put across the U.S. interpretation, which we believe is a good one. But as I understand it, we are not very sure that that is what the agreement says.

In other words, if you are a LDC, you are not committed to go off of export subsidies. Your commitment is consistent with your development needs. And as a matter of fact, all of agriculture is exempt, as I understand it, under the GATT from coming under the subsidy code.

So I agree with you that we should go forward. But it is very difficult for us to take these cases and prevail on them simply on the basis of the written record. I think as you know, we had difficulty in New Zealand, we had difficulty in Australia.

I agree with you on Mexico. The chairman and I went to Mexico City and were as vigorous as we could be about saying they are not going to get relief from the injury test, whereupon the Secretary of Commerce made a ruling that we questioned.

But there is a problem for us and I wonder if you would comment on it in the GATT language itself. Alan, do you want to comment?

Mr. **Wolff**. Yes, Mr. Frenzel. The subsidies code is not a perfect document by any means, but I don't think it has to be read to have the least possible impact. The language is something along the lines of developing countries shall endeavor to enter into commitments with respect to export subsidies consistent with their development needs.

What they get from the United States, however, such as an injury test, it seems to me, is our own decision. It is true, however, that if we differentiate between different developing countries, we could be held in violation of the GATT.

There was some concern about that under Article I, the most-favored nation clause, and the Indian Government would be authorized to retaliate against the United States if we lost, to which I would say fine, let them retaliate. The United States has made a determination, the Congress did, and it was the understanding when the bill passed between the negotiators and the Congress that there would be a firm commitment on the part of developing countries with respect to export subsidies if an injury test was to be accorded. And I think we can maintain that stance without great embarrassment.

India has close to no international trade obligations as a practical matter. The United States has many. We are an open market for Indian goods by and large, and probably the most open market. I would not be unduly embarrassed by saying to the Indians we will have a meaningful commitment from you. And if they said you did better for Pakistan than for India, I would say fine, we will go back and renegotiate the Pakistani understanding.

Where do you draw the line? Mexico is next, and that is what we fear, that all U.S. industry will be treated as toy balloons were.

Mr. McQuade. In the text of the agreement, it says that India will reduce or eliminate export subsidies "wherever the use of such subsidies is inconsistent with its competitive or development needs." That is looser than something which says you shall remove them whenever the removal is consistent with competitive or development needs.

In other words, if a subsidy has a neutral impact on their development needs, then there is no need to remove it. I think it is really so drafted as to amount to a zero commitment.

Mr. Frenzel. I have to agree with you, but I don't think the fault is in U.S. trade policy. The fault is in our negotiability in the MTN round. We didn't get written into the agreements that which all of us wanted in them.

Mr. McQuade. But it is an opportunity to have its interpretation go in a direction which would suit us rather than——

Mr. Frenzel. I don't deny that, just as long as you don't have the feeling that it is in our power to change the policy by unilateral action. We have got to do some plain and fancy negotiating and two administrations were not able under that language to strike a better arrangement with the Government of India.

Mr. Wolff. Mr. Frenzel, I agree that the multilateral negotiating process is not one in which the United States can dictate results, that is for sure. But we can control access to our own market as we see fit— if we are willing to pay the price.

Again, there is no reason for embarrassment as far as the U.S. record is concerned with respect to the openness of our market. I think we could say that as a political necessity, there are certain terms that we would require with respect to subsidies and countervailing duties, just as others make some important decisions for themselves and the Indians say they must maintain complete freedom with respect to their use of subsidies. We say that the Indian noncommitment is not acceptable with respect to access to our market.

Mr. **Frenzel**. I do not want to be flaunting the agreement that we signed and of which we are the chief promoters in the whole world. I will agree that we should use such weaponry as is available to us, because I believe that that is a noxious process that is the subsidy process.

And I agree with what you want to do, but I just want to suggest that it isn't something that we are going to overcome overnight, and we will have to face countries one at a time.

Certainly this subcommittee has taken a more aggressive view than the STR's of the last two Administrations, and I expect that we will continue to be aggressive, particularly with respect to the Mexican example, on which we have been quite outspoken so far.

I thank you for your testimony.

Chairman **Gibbons**. Mr. Bailey?

Mr. **Bailey**. Thank you, Mr. Chairman. I want to thank all three of you for excellent testimony and some very good perspectives on some things maybe we don't look at enough or consider enough. I hope we will do more. Mr. Wolff, you were commenting on some of the agreements with Canada concerning the automobile industry.

I really have stumbled into this. I had some comments made to me that an automobile company had in fact located as a price of doing business in Canada and marketing there, et cetera, had decided to locate a manufacturing or assembly of some type there, and I will try to get more details for you, because of the types of things that you alluded to.

Do you have any knowledge of that? You were defending I think, perhaps with good reason—I don't really know, I am not that well informed on it, and the Chairman alluded to agreements with Canada that helped provide an industry there.

I know that in the area of steel pipe, for example, when you combine their tax policy on capital formation, et cetera, we have literally eliminated American industrial capacity in that area with this type of agreement.

That duty arrangement, as I understand it is still in existence. I probably overstate the case. As I understand it, it certainly has created some problems. Do you have knowledge of any new agreement with new American companies or international companies—not necessarily American.

Mr. **Wolff**. I would like the record to be completely clear that I would not defend Canadian trade or investment policy in any way, shape or manner. The point I was making with respect to Canada is that of our priorities, the importance of export requirements with respect to autos is, it is really closing the barn door probably after the horse has left.

Mr. **Bailey**. A little too late.

Mr. **Wolff**. Back in 1965, the Canadians put into effect some restrictive policies with respect to investment that have distorted investment patterns very sharply. As far as I am aware, the worst damage is behind us.

The Canadians have a number of other programs that are quite distortive today, and with respect to the pipe situation that you mentioned, it is less a problem of investment than a problem of government procurement and trade policy influencing pipe procurement.

Mr. **Bailey**. Then there is a duty situation there?

Mr. **Wolff**. The Canadian tariff is about twice the level of our own, so that the chances of selling our pipe in Canada are very limited. The Canadians through their energy policy use procurement to maximize Canadian content and we don't have much of a crack at it.

Mr. **Bailey**. I just had an automobile manufacturer, very apologetically, who had wanted to locate a facility in the United States, but were persuaded instead to make that investment in Canada.

I will try to get more details on it and run it by you, because I am sure you could inform me as to how fair and reasonable it was. Without more detail, it is hard for me to say. Mr. McQuade, one of the things that caught my ear was your reference to the use of financial institutions in international business.

I look at the list of companies that you have here. I would like to get a more definite statement from you if I could. You mentioned the role that you played in trying to set up arrangements. I notice Westinghouse Electric Corp. here. One time in speaking with some of their officials we talked about trying to reach agreements with governments on contracts concerning sales of power equipment.

In this case it was turbines and that kind of thing. I started to get into it when they indicated that the major reason they had lost those contracts, because they claim they had superior technology was simply because of the financial package.

How big a role does it play? Can we quantify it? I have had people say that our turbine business, some of the research has been stymied or discouraged in geothermal work, for example, because of the countries that do some of the work in the geothermal area, including Japan, they offer more attractive investment packages.

What effect does it have on investment? How do you quantify the impact of financial costs? You mentioned subsidies, I am glad you did.

Mr. **McQuade**. In my opinion, the rate and the length of term of the financing to be used to build a plant can be decisive in terms of who gets it. I think if you have superior quality, you may to some degree be able to offset the fact that somebody else has superior credit terms.

But particularly in the less developed countries, where the problem of building a facility turns on their ability to finance it, they are influenced very heavily and often decisively by the quantity, availability and length of time of the financing which they can get.

So I do believe the Westinghouse example, because in my own experience I have lived through that phenomenon.

Mr. **Samuel**. Could I add to that a bit? One of the companies associated with LICIT has told us that it has bid on foreign requests from a factory in Europe rather than from a factory here despite the fact that its products can be made better and cheaper in the United States, because of the financial package it can get from the factory in Europe.

Those are jobs that are lost to us because of that reason.

Mr. **Bailey**. That is something that at least from the group of people that you folks represent here is vital to get on the record. It is a point that I have been trying to establish.

I always feel myself having to apologize because I am just learning about things in this area, but the major point you can make about something like that is if you are talking about distribution of capital, reinvestment in this world, human problems, what America's future is, our technology edge, the amount of money that we spend on research and development, and I am not just talking about far-out research and development, industrial development and research, then you come to the inescapable conclusion that these impediments to so-called free or fair trade are conducive to poor productivity development and the poor allocation of resources worldwide.

You have to come to that conclusion don't you, because you are talking about multibillion-dollar investments? Maybe our nuclear industry is one of the best examples. I am grateful to you folks, and if you could some time supply me with individual examples, I would love to have them, because I think we are going to have to begin building a case for this thing or the United States of America is going to export not just our capital and technology, we are going to export our livelihood here.

Thank you very much. I really appreciate these remarks.

Mr. BRODHEAD. Mr. Samuel, I was impressed with what you had to say about the location of the engine plants in Mexico due to their export requirements there and your estimate that this results in the loss of 100,000 jobs in the United States.

To what extent do you think that the loss of these jobs or the location of these facilities in Mexico is due to economic factors and to what extent do you think it is due simply to these export requirements? That is, is the 100,000 job loss figure strictly attributable to the export requirements, or is it perhaps partially due to some economic advantages, other economic advantages that they have?

Mr. SAMUEL. It is our feeling that the particular quantity of exports is largely attributable to these artificial requirements of the Mexican export decree. The actual market in Mexico is I think something like 200,000 or 300,000 engines, but a substantial additional number are being manufactured there and exported here because of that requirement.

Normally I don't think those companies would be setting up production there. They have plants here which could meet all their requirements.

Mr. BRODHEAD. I was particularly concerned a couple of years ago when we saw Chrysler Corp. undertaking a substantial investment in Mexico to build an engine plant, and that was right at the same time that Congress was being asked to approve loan guarantees for that corporation, which I advocated and which Congress did approve. I, of course, raised that question with them. I said here you are coming to Congress and asking for loan guarantees at the same time you are undertaking the construction of a new facility in Mexico.

Don't you have unused capacity here in the United States? They said yes, we do. I said why are you spending money in Mexico? They said, because of the export requirement. If they don't invest there they can't do business in Mexico, and they need to do business in Mexico.

Mr. Chairman, we have talked about how our free trade policies promote efficiency and the wise use of resources, and I think this is an example of restrictive trade policies promote inefficiency. This is clearly what happened with Chrysler. Here is a company which was struggling then and is struggling today and has to undertake a huge investment just to keep what they have in Mexico.

We are sympathetic to the economic problems of Mexico and would like tc help, but we are wasting an awful lot of money exporting American jobs there. Mr. Samuel, you have been forthright and articulate on this point, and I thank you for the contribution you have made to this hearing.

Chairman **Gibbons**. These people have inspired me. We started 45 minutes ago, a one-man crusade. Anyone is welcome to join. I think it is a violation of basic principles that we have agreed to. I don't know why we aren't vigorously moving on them, not only against Mexico but against anybody else. I think it is a violation of our laws and any organization can protest privately or through the system.

I think there obviously has to be a bounty of some sort, and if it is Mexico that is doing it, we don't even need to prove injury, because they don't have the injury test. I am ready to start. I have asked the staff to prepare me the necessary letters to the USTR, the GAO and anybody else so we can get going. We are going to stop it.

Mr. **Brodhead**. I am glad to hear that. If you are No. 1 on this crusade, Mr. Chairman, may I be No. 2?

Chairman **Gibbons**. Yes. And anyone else that wants to join me, we would be happy to have you.

Thank you.

Mr. **Samuel**. Thank you. We appreciate that.

Chairman **Gibbons**. Our next witness is Mr. James H. Lundquist, who is a partner in Barnes, Richardson & Colburn. Mr. Lundquist, we are glad to see you back here again.

STATEMENT OF JAMES H. LUNDQUIST, PARTNER, BARNES, RICHARDSON & COLBURN

Mr. **Lundquist**. Nice to see you again, Mr. Chairman. For the record, Mr. Chairman, I am Jim Lundquist, a partner in the law firm of Barnes, Richardson & Colburn. I appear today as an interested citizen, one who has specialized in tariffs and trade law since 1957.

At the outset, I want to register my support for the concept of a public "trade agenda for the 1980's," such as the approach highlighted by Ambassador Brock, the U.S. Special Trade Representative, in his testimony on October 29, 1981.

In my opinion, a specific agenda for the next decade is very important. The idea of announcing a long-term course of action which includes the goals of Congress and the administration should appeal to those charged with responsibility for our commerce.

Indeed, a long-term "plan," if that is the appropriate term, would provide a necessary signal to our trading partners of the intentions of the United States on economic self-interests and trade policy.

Ad hoc decisions based on short-term domestic trends tend only to confuse negotiations and engender suspicions which inevitably cast shadows across negotiating tables in Washington, Brussels, Geneva, and elsewhere.

In recognition of the current serious recession which each of us knows first-hand, as well as from constituents and clients, the record of proceedings in connection with H.R. 8430, 73d Congress is highly relevant. This long debate on the first multilateral trade agreement authority ever delegated by Congress to the President, took place during the depths of our Great Depression in 1934.

As a former member of this committee, the then-Secretary of State, Cordell Hull, argued successfully for authority to be delegated to the President in order to negotiate multilaterally, tariff reductions and modifications in nontariff restrictions based on the now-well-accepted theory that parochialism and unrestrained protectionism in any country, inhibits economic recovery, worldwide.

Almost 48 years have passed, but the need for realistic and forceful multilateral trade agreement negotiations is still essential and in the national economic interest.

Mr. Chairman, at page 19 of the May 1934 report in response to a question from the committee, the Secretary of State said the problems we have in 1934 include high tariff duties, import quotas and license restrictions, exchange controls, mixing regulations, the raising of import and other administrative fees, increasing severity of legislative requirements on marking country of origin, and sanitary requirements.

I hope that some of my comments which should fit nicely with your recent comments, will be taken into consideration.

Before getting to specifics, I should like to venture the opinion that H.R. 4761, a bill to extend residual authority under section 124 of the Trade Act of 1974, may not be enough to form the basis for the necessary long-term public U.S. trade policy.

I recognize, of course, that the full impact of duty and other negotiated agreements under the Tokyo Round is still undetermined and that certain trading partners have informed us that it is too soon to undertake comprehensive negotiations.

However, we are witnessing trends in some of our trading partner countries toward use of the very nontariff measures that preoccupied Secretary Hill in 1934. Whether we admit it or not, there is a step back from past trade concessions and international agreements which cannot and should not be solved through the mechanism of section 301, Trade Act of 1974, to which I will refer in more detail later.

Philosophy and the formal signing of international codes is just fine, but in the end, duties—that is money—is the inducement to agree where nontariff impediments exist. It is suggested therefore that amendment of H.R. 4761 be considered and that changes, if any are deemed appropriate, include delegation of additional duty-cutting authority where it can be established that further tariff cuts can be used by us to bring about other agreements which will enhance American competitiveness abroad.

Expediting the current 7-year staging of tariff reductions pursuant to the Tokyo Round should also be set forth as part of the specific trade agreement authority for the future.

When I entered the field of foreign trade during the implementation stages of the Torquay and Dillon rounds, U.S. policy was relatively clear: We intended to cut our own barriers to trade; we intended to use the General Agreement on Tariffs and Trade as the vehicle; we intended to open our lush consumer market to developed countries on a quid pro quo basis and to less developed countries on a reasonable or gratuitous basis; and we stated our intention to do so only if all our offshore country market delegations participated in multilateral trade talks.

Ambassador Christian Herter's forceful and symbolic bipartisan initiatives made clear to the entire world where we stood, what we wanted, and how we intended going about the trade barrier relaxation business. I am not at all certain anyone in the world today has a clear image of our trade policy.

If trade policy is part of our foreign policy, that fact should be made known. If military commitments are linked to our commercial interests, including services, the linkup should be consistent, relatively formal in statement and have a certain degree of permanency.

The confluence of short-term political-economic events in America often results in seemingly radical changes in our direction. On the other hand, in areas of grave national concern, such as international energy policy, no consistent and fully coordinated trade policy seems to have evolved.

A well-known trade agenda for the 1980's could, I believe, go a long way toward reestablishing our position at the negotiating table.

For example, many of us were in this very room at hearings held in the early 1970's when witnesses from U.S. industry virtually admitted that we were producing and selling old model automobiles with new bodies. The time to have recognized our special need and the time to have acted on this recognition to protect our workers and producers should have been converted to actions at the time the problem was identified and could be understood by foreign governments and manufacturers.

Now, after other producers and other countries have established relatively long-standing markets in the United States, it seems almost skittish for us to resolve now that an emergency exists in 1981, when in point of fact, the illness was properly diagnosed almost a decade ago.

The same can be stated about the origins of the international oil cartel—which was initiated in South America rather than in the Middle East—and our chronic problems with less developed countries in the textile and fibers sectors. A standing trade policy, public trade policy, would clearly identify domestic needs and foreign economic policies and would take the surprise out of remedial action under long-standing statutes.

In furtherance of U.S. trade policy I do not see anything wrong with bifurcating our approach to both a global and a regional strategy, as long as this intention is known to all of our trading partners at the time concessions are considered.

We can learn a great deal from our trade with Common Market. We can base thereon our own equitable trade policy which would assure a balance of our liberal tariff policy on access to raw materials, certain manufactured goods and energy; with requirements of the individual and national security.

The free flow of ideas, designs, developments, technologies, and many services could be tied to tariff cuts and assured access for the U.S. products.

Equitable trade, if enunciated in advance, could be defined to include all of our progressive trade postures while at the same time taking into account our industrial, labor, and consumer interests.

Mr. Chairman, if we Americans are sometimes accused of suppressing our more important desires, no place is this more clearly demonstrated than in the Trade Act of 1974 where "trade relations with Canada" and the manifest sense of Congress is buried at section 612 of the statute, almost on the last page, right next to "limitation on credit to Russia."

I believe, based on long years of work with U.S. and Canadian industries, that a special relation does exist and should be nurtured in the North American trade area. Mexico should always be included in our regional concepts and bilateral negotiations.

Discussions to improve our own backyard, as was stated by you in response to previous witnesses, should commence immediately upon passage of any extension of trade agreement authority.

Finally, on the subject of the definition of U.S. trade policy, a profile of overall national goals with an itemization thereof should be announced and implemented as soon as possible.

With regard to remedial provisions of U.S. trade law, I would like to make some additional comments, one cannot criticize U.S. adoption of the international countervailing duty and antidumping duty codes, as reflected in title I of Public Law 96-39, 96th Congress.

There are, however, difficulties which have come to light during administration which may be worth our attention. In this regard, I am referring specifically to the required preliminary affirmative determination prior to full investigation under sections 703 and 733, Trade Act of 1979. Actual experience under these provisions has, in a number of cases, disclosed unexpected and costly hardships prior to final determination.

Under these provisions, the U.S. International Trade Commission must, within 45 days of receipt of a complaint, make a determination of whether there is a reasonable indication that there is injury or a threat thereof to a U.S. industry. If an affirmative preliminary finding is made, the full investigation proceeds.

However, publication of the preliminary affirmative determination in the Federal Register can have an unanticipated chilling effect on normal business. Businessmen in the United States cannot be expected to understand what is meant by an official announcement labeled: Preliminary.

The announcement, at least for some time after it is made, is interpreted to mean that countervailing duties or dumping exactions will be assessed, even though a final negative determination may take place months or a year later.

Importers so affected are convicted in the trade, before the trial takes place.

Since an affirmative preliminary determination is not a final determination, subject to judicial review under title X, practice under sections 703 and 733 might be modified to require publication in the Federal Register only in the case of a negative determination. In this regard, I must made additional comments.

I have in my hand the most recent USITC preliminary report on a countervailing duty case. This report is 55 pages long and reaches conclusions that are totally misinterpreted when in point of fact it is unnecessary because the formal inquiry must now go on.

In this day of budget cutting, I might suggest all this work could be more carefully considered and put into a final report.

Title III of the Trade Act of 1974, Relief From Unfair Trade Practices, section 301, has, for obvious reasons, lain fallow throughout the Tokyo Round of Trade Agreement negotiations only to emerge in this recession as a threat to the very foundation of our historic trade posture.

I am not against section 301. My comments here are on its current language.

As each of us knows, the broad language of section 301 covers responses to certain trade practices of foreign governments. Within the warp and weft of this lengthy statutory provision is the fabric of a trade war. In fact, I have heard this retaliatory authority described as an unguided missile.

Section 301 introduced language which has not been fully defined by the Congress or subjected to judicial review. At the beginning of the provision it is stated that "whenever the President determines that a foreign country or instrumentality maintains 'unjustifiable' or 'unreasonable' tariff or other import restrictions which impair the 'value' of trade commitments made by the United States, et cetera," we may retaliate as outlined in subsection (A)(4)(A)(B).

As might be expected during times of economic downturn, a number of complaints under this provision of law are coming in to USTR and must, of course, be processed in accordance with the congressional mandate. As far as I can tell, none has been rejected by USTR. It seems no one is entirely sure about section 301. What are the guidelines and what is the precise mandate?

Accordingly, as a part of the current oversight procedure, it is suggested that chapter 1, title III of Public Law 93-618 be reviewed with an eye to necessary amendments. I have no doubt that if all of our major trading partners enacted an individual statute encompassing the language of this provision, we would be the first to shout foul and press compensation claims in Geneva.

Before closing, I would like to make a few general observations. President Reagan recently instructed the U.S. International Trade Commission to study the tariff schedules of the United States with a view to possible adoption of the harmonized commodity code which has been under review, with U.S. observation and/or participation, in Brussels, for more than a decade.

The President provided guidelines. However, there is little doubt in my mind that the USITC study and resulting draft tariff schedules should be, indeed, must be, carefully scrutinized by this committee. It is very important to remember that the changes in tariff nomenclature may result in many cases where the trade negotiating rights of the United States and others—the principal supplier theory—may change drastically as items are included in various new categories.

If such is the case, it should be expected that negotiations under article 28 of the GATT would have to be undertaken prior to final adoption of the harmonized code.

Studies by Congress, and particularly members of this subcommittee, should be undertaken with measured skepticism and deliberate speed. Your excellent professional staff has followed every phase of the Brussels discussions.

Now the time has come to review all changes ab initio in the cold, clear light of U.S. statutory interpretation. It must be remembered that there is a considerable body of administrative rulings and court decisions in the Common Market and elsewhere defining many of the terms included in the harmonized code.

Unless careful definition and background material accompanies the adopted system, an overlay of foreign laws and administrative determinations is inevitable. Amendments to statutes applicable to our Courts of International Trade may be indicated.

Finally, a brief comment on the work of the Committee on Ways and Means and the Subcommittee on Trade. One of the essential ingredients in the success of the Tokyo Round Trade Agreement negotiations was the degree to which Congress was involved in the process itself.

As one who worked with domestic interests and importers, I can report that members of the private sector were relieved to know that they had access to both the executive branch and the legislative branch of Government.

It goes without saying that our trading counterparts, officials of other governments and trade areas, recognized and depended upon the confidence in U.S. initiatives brought about by congressional participation not only in Washington, D.C. but in Geneva and Brussels. We believe this congressional participation should be continued especially by members of this subcommittee and its professional staff.

Thank you.

Chairman GIBBONS. Thank you for your most stimulating statement, much of which I agree with. Let me ask you about the trial of cases under sections 703 and 733.

I have had lawyers explain to me, litigants explain to me that they have to try the case twice under those statutes. You have to go all out and prove as much of a case at the preliminary decision as you do under the final.

It looks like a double shot at the same target. What is your experience?

Mr. LUNDQUIST. My experience has been similar to that, but not identical. I think the concept of having a quick preliminary determination is fine, but we here in this country live in a world of paper, and if it is not on paper it doesn't exist.

Therefore, the process results in preliminary reports like this that I think are a waste. My direct comment would be save the preliminary determination, make it a summary proceeding. Limit it to findings and formal determinations only where it is negative. When it is negative, the claimant loses his case and he must appeal that.

So you must have a written decision in preliminary, negative. But, Mr. Chairman, it is totally unnecessary and burdensome in cases where it is affirmative and the proceeding continues.

I believe a very simple amendment that I would be glad to submit to your staff would do the trick.

Chairman GIBBONS. I would like to have your suggestions on that.

Mr. LUNDQUIST. I will do that.

[The information follows:]

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Subcommittee on Trade

JAN 11 1982

January 7, 1982

Hon. Sam M. Gibbons
Chairman, Trade Subcommittee
Committee on Ways and Means
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Re: Trade Subcommittee Hearings,
December 14, 1981
Testimony of James H. Lundquist,
T.R. 99, etc.

This will supplement my oral testimony before the Subcommittee, specifically with reference to the need for a change of practice in Countervailing Duty and Antidumping cases (Tr. 111-112). I suggested amendment of Sections 703 and 733 of the Trade Agreement Act of 1979, etc., to make any preliminary injury determination proceedings before the USITC less formal and more akin to a preliminary or summary proceeding, without a full report and published determination. My concern, expressed to you and the Subcommittee, is with the negative impact publication in the Federal Register of an affirmative preliminary determination can have on a business in the United States.

The situation can be remedied by amending the respective provisions cited above to require that a formal determination by the USITC be made only when its investigation leads to a negative determination. When the USITC findings support a continuation of the investigation, I would suggest that no formal determination by USITC be required. This approach would recognize time restraints in such cases and permit a respondent to make only a pro-forma appearance before the USITC during the preliminary injury determination stage, since it would not have to be concerned with a formal "decision" against it. On the other hand, if a respondent has the necessary evidence to soundly refute allegations of the petitioner, it would still have the opportunity to appear before the USITC and argue for a formal negative determination.

Substantial cost savings to the Government and to party litigants could be achieved by simple changes in the statute with conforming Regulations. Accordingly, attached are my suggested amendments to Section 703 and 733, including Subpart (f). It is believed that this latter suggestion is necessary to assure that only determinations required to be made by the administering authority under Subparts (b) through (e) of the respective sections are included. In this way, publication of the negative determination by the USITC is dealt with completely in Subpart (a).

Suggested deletions are in brackets and additions are underlined.

Respectfully submitted,

Jim Lundquist

James H. Lundquist

JHL/em

cc: Mr. David B. Rohr

19 U.S.C. 1671b - Section 703
Trade Agreement Act of 1979 Countervailing Duties

(a) Determination by Commission of reasonable indication of injury - Except in the case of a petition dismissed by the administering authority under section 1671a(c)(3) of this title, the Commission, within 45 days after the date on which a petition is filed under section 1671a(b) of this title or on which it receives notice from the administering authority of an investigation commenced under 1671a(a) of this title, shall [make a determination, based upon the best information available to it at the time of the determination, of] investigate whether there is a reasonable indication that -

(1) an industry in the United States -

(A) is materially injured, or

(B) is threatened with material injury, or

(2) the establishment of an industry in the United States is materially retarded by reason of imports of merchandise which is the subject of the investigation. [If that determination is negative the investigation shall be terminated.]
If upon the conclusion of such investigation the Commission's determination is negative, it should notify the petitioner, other parties to the investigation, and the other agency of its negative determination and of the facts and conclusions of law upon which the negative determination is based, and it shall publish notice of its negative determination in the Federal Register. Upon such publication the investigation shall be terminated.

(f) Notice of determinations - Whenever the [Commission or the] administering authority makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

Chairman GIBBONS. Section 301—you are afraid it is a misguided—unguided missile?

Mr. LUNDQUIST. Yes, sir. I realized from listening to the last testimony that I am in dire straits here with that.

Chairman GIBBONS. Well, I would like to hear your point of view.

Mr. LUNDQUIST. Thank you.

Chairman GIBBONS. You heard the last testimony, what about that? Isn't it an unfair trade practice when a government says you can't do business in my country unless you will agree to export *x* amount of units from this factory?

Mr. LUNDQUIST. Mr. Chairman, in the opening part of my statement I referred to my adoption of an agenda. I have felt for years in plying the waters of Geneva, Brussels, and Washington, that the problem we have is we don't have up front what we are going to do.

Are we going to go bilateral? No, we wait. If we are going bilateral with Canada and Mexico we ought to make it part of our policy. Having said that, this provision is so broad that I fear not the difficulties here, but the difficulties in retaliation.

I believe it behooves us to look one step beyond, hey, they did this to me, we got to get back, then what happens next? If I am going to retaliate on paper water cups and I retaliate against printed paper, until I have some guidelines to indicate what the result of that retaliation will be on American exports, I, personally, am not willing to go that far.

The reason why my firm has never filed a 301 case and has rejected the opportunity to file them is we have never been able to get a commitment from USTR, where we will go with retaliation.

My fear is that 301 is so broad that it can bring about a retaliation that would begin the process of stepping back in negotiations.

Chairman GIBBONS. I have suggested to the Canadians it would improve our bilateral relationships to reduce our tariffs, all of those things. I about got lynched by them when I did that. They said they didn't want that paternalism. They didn't want the United States taking them over. They gave me the impression they wanted to be dealt with just on an MFN basis.

That was their position. I have heard it discussed between Canadian members of Parliament and they get in a fight every time they start discussing it, so I don't know that we can do too much with them.

As far as the Mexicans are concerned, it looks like a one-way street. They want bilateralism as long as they get all the advantages. I think we ought to treat them on an MFN basis and have respect for each other, because I think that is really all we have is respect for each other, and that is pretty low right now.

But I don't think we ought to treat Canada and Mexico as special cases. What do you do with the Bahamas and Jamaica and all the other people that are crowding around, all of Central and South America? If we treat Mexico better than we treat all the rest of the Central and South Americans, I think we are in serious trouble.

Mr. LUNDQUIST. I agree. I would suggest however that an amusing exercise would be a review of our relations with France a decade ago. We negotiated in spite of that posture and it turned out to be only a posture. It is my opinion, and it is just one man's opinion, that posturing will disappear after a long, consistent policy of bilateralism in this region.

Chairman GIBBONS. Do you favor moving away from the most-favored-nation type of approach?

Mr. LUNDQUIST. Not at all, but I think there are exceptions. When we went into the Dillon round we had the old valuation statute. We had in existence dozens of bilateral agreements and lo and behold, we found we were able to negotiate right through to the Kennedy round and the Tokyo rounds.

I welcome Ambassador Brock's suggestion, and it would have to be with congressional consent, to put the cards on the table. We are bilateral here because it is in our econimic self-interest and military self-interest.

We are multilateral because it is in the world's interest. I think that is saying on the record what actually exists as a matter of practice, so I am not suggesting that we step away from multilateral trade negotiations.

Chairman GIBBONS. I am not talking about multilateral, bilateral negotiations. I am talking about most-favored-nation treatment. Why should we do anything particularly for Canada or for Mexico? We have got all of the rest of Central and South America, all of the Caribbean area. We would have to look at that and say, well, we are all neighbors in this hemisphere, too. Isn't our best policy served by dealing on a most-favored-nation basis, whereby if we grant a concession to Mexico or Canada, we grant it to everyone?

Mr. LUNDQUIST. Yes, but there are other bilateral agreements on nontariff measures that could take place. I can't allow myself to only look at the tariff trades. We are going to need hydroelectric power in Canada, and friends south and north. That is why I believe that if our trade policy fits into our foreign policy, generically speaking, we should do it. I am in favor of a North American trade sector.

Chairman GIBBONS. The Canadians don't want that, do they? I have only found one Member of Parliament that likes that.

Mr. LUNDQUIST. Well, I think if our light is out from under the bushel and so shines for a couple of years others may see that there is some sense to it. We are inevitably locked together geographically.

I am not saying we could do it overnight. As we did with the Common Market, we could stay on one course of action. Announced in advance, I believe, it is worth considering. It is not my patent for succeeding.

Chairman GIBBONS. Thank you for testifying. It was very interesting. I am glad you came to testify.

Mr. FRENZEL. I am glad, too. I think you have brought an interesting perspective to our hearings and raised some good questions we ought to be thinking about. I don't think with regard to your statement on section 124 that any of us believe that section 124 substitutes for trade policy.

However, it is all we have, so I hope that this subcommittee will be able to pass it without restriction. I think you understand the kind of times that we are in. Protectionism is waxing. Free tradism is waning because of the difficult economic times and perhaps more in EC than here. So I think we will do well to pass section 124 authority, but we don't delude ourselves that it is a policy.

Like Mr. Gibbons, I am nervous about your suggestion of a special North American relationship. We have led the world in telling them that we ought to have a worldwide system. If we accept your views I think we are going to begin to establish some special little bilateralism in our own trade area, in what I call the European style, which has always been offensive to my free trading attitudes.

Can you explain how we could get around that apparent difficulty?

Mr. LUNDQUIST. I do not have a full brief on how to get around it, and I understand what you are saying about violating our own commitment. But then we have violated our own commitment when it suits us in many other areas, and my feeling is that the whole world knows, at least when I sit at meetings with commercial interests, they know the eventual linkup of this North American sector.

I am saying announce the principle and see how it works rather than keep on an old principle that inevitably is going to change. The reason why I think it is going to change is simply energy, energy, and more energy. It is going to happen. We have put energy outside of our trade policy.

We go in and have to do it precipitously. If we assume a worst scenario theory, the United States must depend on its own energy forces, hydroelectric, nuclear, and petroleum, and you draw a map around the United States and then draw a map around the larger curves, I think you will find on our energy policy we are already in a hemispheric approach. I am suggesting it might be worth a try to include this in our trade approach.

Mr. FRENZEL. On that sort of a suggestive basis, I guess we don't disagree with you. I would mention that I have had the same impression Mr. Gibbons had. We had great difficulty even discussing this with the Canadians. At the moment they are not interested and the Mexicans believe it simply means forgiving the injury test for them for all time, with no corresponding commitment on their part.

We have a long way to go in the discussions. This administration, I think, is more interested in developing a hemispheric set of agreements than its predecessor. Maybe that is a good thing. I am not optimistic. I note you indicate it is a good thing that Congress has been involved in trade patterns since the act of 1974.

I am not so sure we have been all that successful. And I am not sure that that has worked out as well as I would have liked it. I think our participation is still in the experimental stage, and I am not willing to go back on the authorities we in fact granted ourselves.

Mr. LUNDQUIST. At the risk of blushing before this august body, I must say that if you went back to the debate and to the implementation under the Dillon round where you had these debates up here, and no one in Europe or elsewhere, I could observe very clearly that there was a basic difference between the sense of Congress and what was trying to be negotiated by our State Department at that time.

What I am saying is this intermeshing where foreign firms and governments see you occasionally and read the debates here, they know what is going on and they know you know. In my judgment, this is a salutory thing. I am not sure the success side is something you would judge.

Mr. FRENZEL. I think it is unavoidable. Unlike the Westminster forms of government, we are truly a multi-branched government and since foreign negotiators have to take into account what Congress is going to do with a negotiated agreement, it is well that they know what they are thinking.

I think that is correct. However, we still have difficulty speaking with less than the 539 voices. We sometimes confuse our foreign trading partners more than we illuminate the scene for them.

But again, I want to say that I appreciate your testimony and I think it is excellent. We are always glad to see you before the subcommittee. Thank you.

Chairman **Gibbons**. Yes, sir, Mr. Lundquist. We will close on that note while we go over and vote. We will be right back. The next group of witnesses are from the American International Automobile Dealers Association.

[Recess.]

Chairman **Gibbons**. Back on the record.

We will resume with the American International Automobile Dealers Association.

You may proceed.

STATEMENTS OF ROBERT M. McELWAINE, PRESIDENT, AND EDWARD G. CONNELLY, CHAIRMAN OF THE BOARD, AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION, ACCOMPANIED BY BART S. FISHER, COUNSEL

Mr. **McElwaine**. Thank you, Mr. Chairman.

I am Robert McElwaine, president of the AIADA. Mr. Connelly is on my left, the chairman of the board of the organization and a Volkswagen, Honda, and Alfa Romeo dealer from Ohio. On my right is Mr. Fisher of Patton, Boggs & Blow.

Since 1970 our association has been intimately involved in matters of trade policy with many types of legislation that have been offered to the Congress, during the great leap forward of the Tokyo round, during the multilateral trade negotiations, and the Trade Act of 1974.

We would like to congratulate this committee and the chairman for arranging to hold these hearings to provide an opportunity for the Government and the private sector to share an overview of U.S. trade policy. I am grateful to have this opportunity to come before the committee and share with you the conclusions that have grown out of our own experience.

The troubles with our trade policy are many, but they stem from one root cause, that our international trade policy is once again lagging behind events. Our problems are both substantial and procedural.

In order, they are, one, we do not have a clear policy toward foreign and domestic measures that distort investment decisions.

Two, we do not have a clear designation of authority or an adequate structure for devising such a policy within the executive branch. Indeed, we do not even have a full committee of this Congress to deal full time with investment policy as this committee devotes its full attention to trade policy.

Three, there are no international rules expressing a consensus about the way governments are to treat investment and no international forum for negotiating disputes over trade distorting investment practices. We are only beginning to appreciate the inextricable relationship between trade and investment. Begger thy neighbor investment incentives and performance requirements are indeed the new protectionism and they distort trade as surely as quotas and export subsidies, but they are not covered by international agreements as are these more direct trade barriers.

In probably no other industry has the effect of trade-distorting policies been so apparent as it has been in the automobile industry. For the past several years the great debate within the industry has been concerned with the policy of exporting capital to building factories in their market countries around the world, in contrast to the Japanese policies which are attuned to keeping their investments and jobs in their own country and exporting the finished product.

In years past the Detroit manufacturers explained that it was necessary for them to manufacture on the site of overseas markets because trade restrictions made export impossible for them. The Japanese have deflated that argument by exporting more than 4 million vehicles annually, the majority of which go to countries other than the United States. Had U.S. manufacturers fought for that export market instead of ceding it to the Japanese, Ford, GM, and Chrysler today might be manufacturing and exporting those 3 million vehicles annually. Were that so, we would have a healthy and thriving industry and the resulting inflow of $17.5 billion annually would put the auto industry in surplus despite imports from the Japanese.

It appears that the real reason the manufacturers exported their capital and their jobs to Spain, England, Germany, France, Korea, Japan, Taiwan, Mexico, Brazil, Canada, South Africa, is not trade barriers, but a welter of enticing investment incentives combined with tax breaks and accelerated writeoffs and the accompanying performance requirements and domestic content laws that go along with them.

Take one specific example that has already been discussed before this committee to a considerable extent. The Mexican Government has estimated that its auto development policy degree will raise exports of auto parts to more than $5 billion by 1985 and that 60 percent of these parts will be exported to the U.S. market. This means an equivalent loss of up to 115,000 jobs in the U.S. auto and auto parts industry.

No responsible analyst in any of the International Trade Commission hearings or before any of the congressional hearings that have been held on the issue of automobile imports has laid the loss of so many jobs in the U.S. automobile industry to the importation of finished automobiles. The administration has taken the position that performance requirements and domestic content laws are an undesirable interference in the marketplace and a violation of the spirit and perhaps the letter of international trade agreements. We believe this position must be supported by a series of actions.

We have had a study done on domestic content laws, which are one form of performance requirement, Mr. Chairman. I would like to ask that this study be included in the record of our testimony before this hearing if we may.

Chairman GIBBONS. Without objection, it will be included.

Mr. MCELWAINE. We propose the following actions to deal with this problem, Mr. Chairman: One, that the United States take the initiative to commence a major study by the organization of economic cooperation and development of the relationship between trade and investment, the effect of performance requirements on international competition; two, that the United States initiate consultations with its trading partners regarding the establishment of a general agreement on investment practices, to do for investment practices what the General Agreement on Tariff and Trade has done for trade practices; three, that the Congress take up promptly action to establish a Department of Trade and Investment, combining functions now performed by the U.S. Special Trade Representative and the Departments of State and Commerce and the Overseas Private Investment Corporation, so that the combined functions of trade and investment can be administered in a single agency and not be spread among as many as 10, 12, or 14 departments and agencies, as they are now.

I have read the record of the earlier part of this hearing, with testimony from all the Government agencies involved in trade matters, and the size of the testimony was staggering, as was the amount of information covered, but I couldn't help but think that the same hearings held in Japan would have only one witness.

Our position in opposition to U.S. performance requirements are consistent with our general hostility to emulating the bad policies of other nations rather than seeking the elimination of these policies. Voluntary restraints on Japanese automobile exports have proved to be counterproductive, adding $4.5 billion a year to consumer cost for automobiles, while failing to put one auto worker back on the job. These constraints were composed with the avowed purpose of allowing manufacturers to amass capital for needed expansion and modernization of their U.S. factories.

After 6 months of these restraints, one must ask how the U.S. manufacturers have responded to this opportunity. One, they have raised prices, both the hidden and obvious prices on their product, nearly $1,000 a car. They have continued their ambitious spending programs abroad despite cutbacks and delays in their domestic spending programs.

General Motors recently spent hundreds of millions of dollars for the purchase of 5 percent of the Suzuki Corp. in Japan, the maker of minicars. General Motors is also continuing the expansion and development of six new factories in Europe simultaneously. Ford has launched production of a large new engine facility in Mexico and they have launched a new venture in Hiroshima, Japan, to build engines and transaxles for the Ford automobiles in the United States.

This is how our industry responds to trade restraint and to artificial tampering with the marketplace. The free market works both nationally and internationally. Efforts to manipulate the market through quotas, investment incentives, and such are counterproductive, forcing manufacturers into noneconomic investments that distort trade and raise prices.

We hold that the efforts of this committee and this Government should be directed at ending these market distorting practices and not simply to encourage the adoption of such practices in this country.

Thank you, Mr. Chairman.

[The prepared statement and study previously referred to follow:]

STATEMENT OF THE AMERICAN INTERNATIONAL AUTOMOBILE DEALERS ASSOCIATION

SUMMARY

I. Trade and investment are inextricably connected and must be addressed together in an integrated U.S. international economic policy. Government policies that distort investment decisions also distort trade flows and competitiveness.

   A. Foreign investment incentives draw away capital that otherwise would be invested here and would increase U.S. productivity.

   B. Foreign performance requirements decrease U.S. export opportunities, increase U.S. import competition, and frequently cause investments to be placed abroad rather than at home in order to meet the performance standards.

   C. Self-imposed tax and regulatory disincentives to invest in the United States have further distorted investment decisions and driven capital offshore.

II. "Begger-thy-neighbor" investment incentives and performance requirements of foreign nations are the "new protectionism" of the 1980's, just as non-tariff barriers were the new protectionism of the 1960's. Self-imposed disincentives for investment in the United States are comparable to the "export disincentives" that became well known in the late 1970's.

III. The U.S. Government lacks a substantive policy toward investment and the organizational structure for creating such a policy. The international community has no accepted body of rules on the treatment of investment and has no forum for devising such rules. Accordingly, the AIADA proposes:

   A. A major study by the OECD of the relationship between investment and trade policies with specific examples of begger-thy-neighbor investment policies and specific proposals for action.

   B. Negotiation of a General Agreement on Investment Practices, parallel to the General Agreement on Tariffs and Trade.

   C. Creation within the Executive branch of a Department of International Trade and Investment.

IV. Perhaps more than any other U.S. industry, the automobile industry has suffered from inadequate investment in the United States at the same time that U.S. auto companies were investing heavily abroad. In part, this resulted from foreign investment incentives such as tax holidays, direct subsidies, and low cost loans. In part, foreign investment was necessary in order to comply with foreign performance requirements - such as mandatory export requirements - for U.S. auto companies that already maintained production facilities abroad.

V. United States maintains an impressive governmental apparatus and statutory framework for ensuring that our manufactured goods are treated fairly in international trade. Why is there no similar structure for ensuring fairness in the treatment of our investments?

   A. The OECD has made some modest attempts to forge an international consensus about fair treatment of investment.

   B. These efforts have not been sufficient, however, and thus the AIADA proposes both a major study by the OECD and the negotiation of a General Agreement on Investment Practices.

VI. Our proposals are intended to be positive, not negative. Restriction of trade and investment rarely is effective to address the problems of a domestic industry. The "voluntary" restriction of automobile exports by Japan has been spectacularly ineffective in addressing problems of the U.S. automotive industry.

VII. Internationalization of production is irreversible in the automobile industry. In the long run, this trend will be highly beneficial *if* the U.S. Government will take steps to ensure that our investment is treated fairly both at home and abroad.

STATEMENT

The American International Automobile Dealers Association (AIADA) represents the interests of 7,000 American dealers who sell imported automobiles, and the 165,000 U.S. employees of these dealers. For most of the past decade, the automobile industry has occupied a central place in the rapid evolution of international economic relations. Naturally, the AIADA has followed this evolution closely, and we would like to share with the Committee today some conclusions that have grown out of our experience. Certainly these conclusions are consistent with the interests of our membership, but we believe that they are also consistent with the broader international interest of the United States in promoting greater productivity at home and fair treatment of U.S. industries abroad.

Mr. Chairman, U.S. international trade policy again is lagging behind events. In the 1950s and 60s, taking our dominant competitive position for granted, we built into our tax and regulatory system disincentives to export and to invest in production facilities at home while we turned a blind eye upon many foreign actions that restricted our exports and distorted our investment decisions. Now, after the record trade deficits of the 1970s, the promotion of U.S. merchandise exports at last appears to have become an important national priority. But it would be tragic if, in our rush to promote exports, we ignored the other half of U.S. international competitiveness: our policy toward investments in the United States and abroad. Just as non-tariff barriers were the "new protectionism"of the 1960s, begger-thy-neighbor investment incentives and performance requirements are the new protectionism of the 1980s. Just as "export disincentives" were the self-imposed affliction of the 1970s, disincentives for investment in the United States are the self-inflicted competitive penalty still to be faced in the 1980s.

The problem of the U.S. Government is both substantive and procedural. We do not have a clear policy with respect to foreign and domestic measures that distort investment decisions. We do not have a clear designation of authority or an adequate organizational structure for devising such a policy within the Executive branch - and indeed we do not have subcommittees of the Congress that devote their full attention to investment policy, as this Committee devotes its attention to trade policy. No body of rules expresses an international consensus about the way governments are to treat investment, and no truly international organization provides a forum for negotiating the reduction of distorting investment practices.

Most fundamentally, there has not been an adequate appreciation here or abroad of the inextricable relationship between trade and investment. Begger-thy-neighbor investment incentives and performance requirements distort trade as surely as do direct import quotas and export subsidies. Our own investment disincentives hamper the ability of our industries to be competitive internationally in essentially the same way as do export disincentives.

No industry feels the competitive effects of distortive investment practices more than the automobile industry. Automobile manufacturers and their dealer networks, and the employees of these organizations, live by the increasing internationalization of automobile production. This is, in principle, an extremely healthy development. If government measures affecting investment were reasonably neutral around the world, then the entire U.S. automotive industry would prosper by the trend toward internationalization as a result of increased investments in production facilities at home and increased exports of automotive parts abroad.

But the essence of the problem, Mr. Chairman, is that investment measures are far from neutral. We are here today to talk about that problem and to propose several solutions, including:

- a thorough study by the Organisation for Economic Cooperation and Development (OECD) of the relationship between investment disincentives, incentives, and performance requirements on one hand, and international trade competitiveness on the other, with specific examples and proposals for action.
- negotiation of a set of principles and organization to be known as the General Agreement on Investment Practices, parallel to the General Agreement on Tariffs and Trade.
- creation within the Executive branch of a Department of International Trade and Investment to provide clear direction of the executive on international trade and investment matters.

To repeat, Mr. Chairman, our proposals have grown out of our experience in following international developments in the automobile industry. How did the American automobile industry get into its present position? Thirty-five years ago, the U.S. industry was the only functioning car industry in the world. In 1964, we made 80 percent of all the automobiles produced in the world. At the start of the 1960's, we still produced half of the world's cars.

From 1965 until the present, however, domestic manufacturers have increased their production by only 15 percent. In the same period of time, Canadian production has more than doubled, French output has doubled, German production has increased by 35 percent, Italian manufacturers have grown 45 percent, and Japanese production has increased by a massive 400 percent.

Total world automobile production has increased by 73 percent in the fifteen years since 1965. Obviously, the United States has not kept pace with that growth. United States manufacturers, however, have. In fact, a very large portion of that growth has been accounted for by production increases on the part of the overseas affiliates of U.S. companies.

The picture of the United States as a mature market has obviously influenced the investment decision of American manufacturers. There have been other influences. There has been a virtual worldwide auction of new automotive plants, with nations competing with each other in piling incentive on incentive to acquire the jobs and production capacities such plants represent.

These incentives include direct cash grants, tax advantages, accelerated write-offs, and low-cost loans. The United States has not competed in this auction. Instead, our tax income, as well as direct and indirect foreign tax credits, provide a powerful disincentive for the subsidiaries of automotive manufacturers to return their growing overseas profits to this country for investment here. For many years, foreign profits have been reinvested abroad, with the consequence of even greater profits abroad, and, therefore, further reinvestment abroad.

Meanwhile, in the United States, several factors have combined to discourage domestic investment. The necessity of meeting Federal regulations and standards has consumed much of the funds otherwise available for investment. And the economies of scale created by manufacturing millions of cars built on the same concept and design used year after year made U.S. manufacturers reluctant to effect radical changes in their output by sacrificing profits in the short run.

These developments in the automobile industry paralleled larger developments in the U.S. competitive position. It is now well known that important changes occurred in the composition of the U.S. current account during the 1970's. In 1971, the United States recorded the first deficit in its merchandise trade balance since the close of the nineteenth century. Increasingly large deficits followed in 1972, 1974, and 1976. Since 1977, the United States has recorded annual merchandise trade deficits of between $25 and $34 billion. The deficit for 1981 will be worse than that of 1980, and by all indications the merchandise trade deficit for 1982 will be larger still.

At the same time that the United States has been compiling these growing deficits in merchandise trade, the nation has been recording increasing surpluses in the net income from U.S. foreign investments. During the 1950's and 60's, U.S. net income from foreign investment grew from roughly $1.5 billion to $6 billion annually. From 1970 to 1980, however, this surplus increased more than 5-fold from $6 billion to $33 billion. What has happened over the past twenty years is that the main reason for a balanced U.S. current account has shifted from large surpluses in merchandise trade to large surpluses in the earnings of foreign investment, especially direct foreign investment. For example, in 1980 the United States recorded a deficit of $25 billion for merchandise trade but a surplus of $33 billion from investment income and, after other transactions were taken into account, an overall surplus of $3.7 billion on the current account.

But U.S. foreign investment does far more than merely return large amounts of cash to U.S. companies. Efficiencies created by the "internationalization of production" enable U.S.-based manufacturing companies to compete with their counterparts in other nations. Foreign affiliates of U.S. manufacturing companies also import enormous quantities of U.S. components. According to the Commerce Department, in 1977 roughly 33 percent of all U.S. exports were traded between U.S. companies and the affiliates of U.S. companies abroad. For manufacturered exports, the proportion of total trade that is intra-company trade is far higher.

Thus, although we believe that the problems of U.S. automakers stem in large part from their failure to invest adequately in this country, we are certainly not opposed to foreign investment as such. Indeed the removal of U.S. investment disincentives and of foreign investment incentives and performance requirements are part of the same goal: to render special government regulations reasonably neutral in decisions about where to locate and improve productive facilities.

What are some of the distortive practices that exist at present? In his written submission to this Committee, Harvey Bale, the Assistant U.S. Trade Representative for Investment Policy, listed ten different trade-related performance requirements and restrictions placed on investors by foreign governments. These include:

(1) Export requirements;

(2) Requirements regarding minimum import and local content requirements;

(3) Requirements relating to size (e.g. capital invested or employment levels);

(4) Requirements regarding industrial sectors or specific industries;

(5) Requirements regarding location of industry;

(6) Requirements limiting foreign ownership (or providing for local participation);

(7) Requirements regarding employment of foreign nationals (or the employment of nationals, especially in technical and managerial positions);

(8) Requirements relating to investor financing and access to local capital;

(9) Restrictions on the remittance of earnings and the repatriation of capital; and

(10) Requirements concerning the introduction of new products and new or high-level technology.

Mr. Bale went on to state:

> "In the case of export performance requirements, foreign investors are required to export a minimum volume of percentage of their output, often as a condition for an investment incentive - e.g., a tax holiday or cost subsidy. This practice creates an export subsidy which we believe runs counter to the recently-negotiated GATT code on subsidies and and countervailing duties.
>
> Local content and import substitution requirements divert purchases of foreign-owned firms away from sometimes preferred foreign suppliers toward local producers. These local content requirements are, as witnesses in previous hearings have argued, the functional equivalent of quotas, which also run counter to the GATT."

In one specific example of the effect of the performance requirements, the Mexican Government has estimated that its Decree for Development of the Automotive Industry will, when it becomes fully effective in 1982, raise exports of Mexican auto parts from $650 million in 1979 to over $5 billion by 1985. Some 60 percent of these increased Mexican exports will be directed to the U.S. market. It is estimated that the equivalent of 86,000 to 115.000 jobs in the U.S. auto and auto parts industries would be lost by such an increase in Mexican exports.

Investment incentives may range from tax holidays, to the grant of free land and services, to low-cost loans, to the duty-free importation of components. The Commerce Department recently found that an average of 26 percent of U.S. affiliates overseas had received one or more incentives to invest. Twenty percent of all U.S. affiliates receive tax concessions, 8 percent receive tariff concessions, 9 percent receive subsidies, and 5 percent received other types of incentives. Almost an equal percentage of U.S. affiliates in developing countries and developed countries received incentives upon investing. The Commerce Department found a wide range from country to country in the percentage of companies that were granted investment incentives. Ireland, for example, granted one or more incentives to 70 percent of its U.S. affiliates. South Korea was second with 53 percent.

The effect of these incentives, Mr. Chairman, often is to ensure that investment that could increase jobs and productivity in the United States is placed offshore instead. Our own practice of deferring income taxes on manufacturing and investment earned abroad, and of granting immediate tax credits for income taxed abroad, contribute to decisions to invest outside the United States.

Since the end of World War II, the United States has devoted enormous attention to its international trade policy. Effective international rules and institutions, such as the General Agreement on Tariffs and Trade, have been developed to liberalize progressively the conditions for merchandise trade. A Cabinet position and a supporting agency, the U.S. Trade Representative and his Office, have been created to coordinate and execute U.S. international trade policy. An elaborate framework of U.S. laws are designed to ensure that U.S. companies are treated fairly in merchandise trade competition. Subcommittees of the Congress, of which this Subcommittee is a primary example, as well as Executive branch positions ranging from Undersecretary to Office Directors, are specifically charged with looking after U.S. merchandise trade policy.

Why has no similar effort been made in the area of international investment? Why is there no similar Executive branch structure for dealing with investment issues? Why has the international community not done more to establish discipline over national practices that distort international investment and impinge upon international trade competition? At present the only semblance of effective discipline exists in a network of bilateral tax treaties and commercial treaties maintained by the United States that help to create a somewhat more secure environment with respect to rights of establishment by investors, national treatment for foreign investors, and taxation of multinational enterprises. A small beginning toward multinational discipline has taken place within the Organisation for Economic Cooperation and Development (OECD). As early as 1961, the OECD adopted a Code of Liberalization of Capital Movements and subsequently the OECD inaugurated a Committee for Invisible Transactions and a Committee on International Investment and Multinational Enterprise, which hold periodic sessions on international direct investment issues.

In 1976, the second of these OECD committees produced "Guidelines for Multinational Enterprises" and Declarations on "National Treatment" and on "International Incentives and Disincentives." The "Guidelines" in fact are a voluntary, weakly-phrased code of conduct for multinational enterprises. The "Declaration on National Treatment" does provide that OECD member nations will:

> ". . . accord to enterprises operating in their territories and owned or controlled directly or indirectly by nationals of another member country . . . treatment under their laws, regulations and administrative practice consistent with international law and no less favorable than that accorded in like situations to domestic enterprises."

Even this simple principle of national treatment has never been ironclad, an evidenced by the continuing failure of Canada to accord national treatment to foreign investors under its Foreign Investment Review Act (FIRA).

The third part of the 1976 OECD document, the "Declaration on International Incentives and Disincentives," merely states that member countries should:

> ". . . recognize the need to strengthen their cooperation in the field of international direct investment; and they recognize the need to give due weight to the interests of Member countries affected by . . . incentives and disincentives to international direct investment."

This declaration commits its adherents to nothing.

In the years to come, the OECD initiative may be regarded as a first step in the evolution of a meaningful international framework to deal with investment. But the time has come to take additional steps, and to take them boldly. Accordingly, the American International Automobile Dealers propose that the United States take the initiative to commence a major study by the OECD of the interrelationship between trade and investment, the effect of national regulation of foreign investment through such measures as performance requirements upon international competition, and the institutional means for establishing international discipline over government regulations affecting foreign investment.

We anticipate that this study will find that the only effective means of imposing international discipline over national investment policies will be to establish an effective body of rules and organization similar to the GATT. Thus the AIADA proposes that the United States begin immediately to consult with its trading partners about the possibility of establishing a General Agreement on Investment Practices, to embody and administer agreed upon international rules governing national controls over investment. Only by thus forging a consensus about the problem of investment restrictions, by hammering out basic rules of fairness in dealing with foreign investors, and by creating a permanent international body to administer and nurture those rules, will sufficient discipline be exercised.

Finally, Mr. Chairman, the United States needs to act upon proposals to establish a Department of International Trade and Investment. Such a Department could, by combining functions now performed by U.S. Trade Representative's Office, the Overseas Private Investment Corporation, the State and Commerce Departments, take a clear lead in devising U.S. policies that treat international trade and investment as closely related parts of a unified international economic policy.

Mr. Chairman, the solution to unreasonable foreign investment regulations, such as performance requirements, is not to emulate them. The AIADA has, in fact, commissioned a study of the probably consequences of adopting U.S. local content requirements for the automotive industry. This study, which is being submitted for the record, concludes that such U.S. performance requirements would be economically inefficient, would do serious harm to U.S. automobile producers, would invite retaliation by foreign governments, and would violate several U.S. international obligations.

Our conclusions about the undesirability of U.S. performance requirements are consistent with our more general observations about the futility of emulating bad policies of other nations rather than seeking the elimination of those policies. Additional U.S. trade restrictions and quotas are rarely effective in addressing the long-term problems of a U.S. industry. No where is this more true than in the automotive industry, where "voluntary" export restraints by the Japanese have been counterproductive and have reduced the effective competitiveness of U.S. automobile manufacturers. The "voluntary" Japanese restraint has increased consumer costs for automobiles by some $4.5 billion annually, without adding a single job in U.S. automobile factories. The artificially created shortage for Japanese cars has enabled dealers and manufacturers in the United States to increase their prices by as much as $1,000-to-$1,500 per unit.

The absence of price competition for imports has enabled domestic manufacturers to increase prices of U.S.-made cars both by raising the sticker prices and by increasing such items as "transportation fees" by as much as 300 percent to more than $500 in some instances. By contrast, transportation charges on a Japanese import are less than $200.

For the imported automobile industry, the quotas have meant even greater price increases, far exceeding the 7.5 percent price increases announced by the manufacturers. Announcement of the import restrictions triggered an immediate demand for Japanese cars by the consumers, in conformity with the accepted marketing saw that nothing makes a product so desirable to the American consumer as the knowledge that it is either in short supply, a new trend, or illegal.

Dealers responded by largely eliminating any discounts formerly offered, thus increasing the price by approximately $200. Cars in stock now frequently include such expensive options as customs glazing, undercoat and rust proofing, adding as much as $500 to the cost. The "sticker shock" that results from these price increases has been an even greater factor than sustained high interest rates in maintaining depressed U.S. auto sales. The Japanese "voluntary" restraint agreement (VRA) that results directly from pressure by the U.S. Government has contributed substantially to that "sticker shock."

And what have U.S. auto companies done with the "opportunities" to amass capital and increase productivity that supposedly were presented to them by the Japanese VRA? For the most part the U.S. companies have, even in the face of heavy financial losses, continued to invest heavily abroad - an indication of the power of investment incentives. Despite cutbacks and delays in its domestic capital spending program, General Motors has continued its ambitious expansion program in Europe and elsewhere. GM has also strengthened its ties with Isuzu in Japan, in which it owns a 34 percent interest, and has extended its Japanese commitment with the purchase of a 5 percent interest in Suzuki, makers of ultra-small mini-cars. Ford has continued its expansion of engine-making facilities in Mexico and has entered into a further venture with its Japanese partner, Toyo-Kogo (Mazda) to provide engines and transaxles for U.S. front-wheel drive Fords. Chrysler has reinforced relations with Mitsubishi and has permitted its Japanese partner (15 percent interest) to begin its own importation and distribution operation in the United States beginning in 1983. In some cases, further investment abroad was necessary to meet performance requirements for investments already in place.

These U.S. automotive companies are voting with their cash that internationalization of automotive production is the wave of the future. Politically-contrived import restrictions have no place in that future, for the companies that are restricted are increasingly owned in part by American companies, or are purchasers of American automotive parts, or are investors in the U.S. market. Nissan's light truck factory in Tennessee, for example, is well along in the construction process and

Honda has announced another factory, to supply major components, that will be built along side its automobile factory in Ohio, where construction began in December, 1980. Volkswagen already is producing automobiles in Pennsylvania, and Mercedes has committed substantial investments in production facilities.

In 1980, the Toyota companies in the United States and Japan purchased $260 million in parts and accessories from U.S. suppliers, an increase of nearly 60 percent over the 1979 total of $163.4 million. The import value of purchases by Toyota in Japan totalled $153.9 million for parts and accessories used in auto assembly lines operations and for non-automotive items. This has nearly doubled the 1979 figure of $88.6 million.

In addition, replacement parts and accessories totalling $106.1 million were purchased from 50 U.S. supplies by Toyota, U.S.A. These purchases amounted to a 42 percent increase over the 1979 total and increased to nearly 42 percent the U.S.-manufactured share of all replacement parts and accessories purchased by Toyota, U.S.A. for the U.S. market. Since 1975, parts and accessories purchased by Toyota in the U.S. have increased more than 400 percent.

Toyota also is anticipating a substantial increase in U.S. purchases during the present year.

Nissan, in its fiscal year ended March, 1981, increased its purchase of U.S.-made parts and components to $91 million, double the 1979 fiscal year purchases of $44 million. The company originally anticipated a further 12 percent growth in

U.S. purchases, to more than $100 million this year. Signing of a contract with Borg-Warner Corp. to provide five-speed transmissions to Nissan may accelerate that growth substantially.

In the end, it is a growing internationalism that may provide the salvation for the U.S. auto industry by making it competitive in world markets, bringing new factories and capital into this country from foreign manufacturers, creating demand for U.S. parts, materials and components, providing financial strength for weakened U.S. companies such as Chrysler through merger and partnership. Economic nationalism and protectionism, whether in the trade or the investment field, will doom our auto industry to permanent non-competitive status and dwindling effectiveness in the marketplace.

The free market doctrine works - on an international, as well as a national basis, and for the treatment of investment as well as treatment of trade and goods. Efforts to manipulate the market through such devices as imposed quotas, domestic content laws, or performance requirements, are, in the long run, counter-productive, and force manufacturers into uneconomic investments that distort trade practices and raise prices. The efforts of this Committee and this government should be directed at ending these market-distorting practices wherever they exist in the world and not to encourage the adoption of such practices by this country. It is for this reason that the AIADA has made its proposals for a major study under auspices of the OECD, and ultimately for a General Agreement on Investment Practices that will establish the rules and the institution for imposing discipline over the treatment of foreign investors by national governments.

CRITIQUE OF PROPOSALS TO ESTABLISH NORTH AMERICAN CONTENT REQUIREMENTS FOR AUTOMOBILE COMPANIES THAT SELL IN THE UNITED STATES MARKET

(Prepared on Behalf of the American International Automobile Dealers Association, by Patton, Boggs & Blow)

I. Summary and Conclusions

A. The Proposal

The President of the United Auto Workers, Mr. Douglas Fraser, has announced that the UAW will seek legislation requiring automobile companies with substantial sales in the U.S. market to use high proportions of "North American content." At this time, main points of this proposal appear to be the following: by 1985, all automobile companies with annual sales in the United States of more than 200,000 units would be required to average at least 75 percent "North American content," and all automobile companies with annual U.S. sales exceeding 500,000 units would be required to average at least 90 percent "North American content." This proposal is intended to grant protection to U.S. and Canadian autoworkers beyond that already provided by the recent "voluntary" Japanese undertaking to restrict automobile exports to the United States, and by regulatory and tax relief that has been made available to the U.S. auto industry.

Had the UAW proposal been fully in effect in 1980, the 90 percent rule would have applied to Toyota and Nissan, as well as to General Motors, Ford, and Chrysler. Honda and Volkswagen would have been subject to the 75 percent requirements. Few, if any, of those companies, including the U.S. companies, would have met the requirements.

"Local content" requirements, such as those proposed by the UAW, have virtually the same practical effect as import quotas.*/ Indeed it is difficult to see how the proposals could be enforced except by means of formal quota restrictions that would prohibit the entry of vehicles in excess of the specified limits for manufacturers not meeting the "North American content" requirements.

There are other reasons why the UAW proposal would be counter-productive. It would undermine efforts by the Administration to secure the elimination of local content requirements by other nations. It would trigger a wave of restrictions by other nations that would hurt U.S. export industries. It would set an unusual and undesirable example of direct Congressional intervention in U.S. trade policymaking on behalf of a particular industry. And finally, the counting of parts and vehicles that are made in Canada as "North American content" would cause the United States to violate several of its international obligations.

B. The Congressional Research Service Study

In August 1981, the Congressional Research Service (CRS) of the Library of Congress released a study entitled "Local

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*/ See, e.g., John H. Jackson, *World Trade and the Law of GATT* (1969) at 289.

Content Laws and Automobile Imports: Arguments Pro and Con."*/ The principal observations that are made in the CRS study are consistent with our conclusions about the probable effects of U.S. local content legislation. The CRS study, for example, concluded that although U.S. local content rules might preserve some jobs for autoworkers and workers in U.S. auto supply industries, such rules also would:

- violate the General Agreement on Tariffs and Trade (GATT);
- possibly result in "reduced U.S. exports or increased imports elsewhere in the economy" that would offset any benefit to workers in the U.S. automobile and auto supply industries;
- harm U.S. auto producers;
- increase prices in the United States for both U.S. and foreign automobiles;
- impose burdensome bookkeeping requirements upon U.S. automobile companies and auto supply companies; and
- require modification of the U.S.-Canadian Automotive Agreement.

C. Summary of Proposals' Weaknesses

Our conclusions about why the UAW proposal would be bad law and worse policy are listed below and then are discussed more fully in the pages that follow. The proposal, if adopted, would:

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*/ Dick K. Nanto, "Local Content Laws and Automobile Imports: Arguments Pro and Con," Library of Congress, Congressional Research Service, Report No. 81-191 E. August 20, 1981, hereinafter cited as "CRS Study."

- Be costly, inefficient, and inflationary;
- Undermine U.S. efforts to gain elimination of local content requirements by other nations;
- Be equivalent to an absolute import quota that would be far more restrictive than the current "voluntary" export undertaking by Japan;
- Involve indirect costs resulting from oligopolistic pricing in the U.S. market and weaker wage restraint on the part of the UAW;
- Be harmful to the U.S. auto industry by forcing U.S. auto companies to curtail sharply their captive imports of foreign-built models and their use of foreign-made components, thus raising costs for the companies and for consumers and preventing the companies from participating in the growing worldwide rationalization of automobile production;
- Cause the United States to violate its obligations under the General Agreement on Tariffs and Trade and under U.S. treaties of friendship, commerce, and navigation;

- Result in a loss of jobs elsewhere in the U.S. economy that would offset any gain of jobs in the auto industry.

Local content requirements have not been widely used by industrial countries for temporary protection against import competition. No major auto-producing nation has local content requirements for its auto industry. Local content requirements are not among the types of relief that can be recommended by the International Trade Commission in "escape clause" actions under section 201 of the Trade Act of 1974. They are not among the actions that the President is permitted by U.S. law to take in such cases.

In summary, the UAW is proposing special measures for its members in the United States and Canada at the expense of U.S. auto companies, U.S. consumers, other U.S. industries and their workers, and U.S. economy as a whole, and U.S. international economic relations.

II. Trade and Economic Consequences of the UAW Proposal

A. Domestic Content Requirements Would Be a Major Step Backward in Trade Policy

Local content requirements are unfair and ineffective measures for trade protection that are better suited to the trade warfare of the 1930s than to present trade relations. In recent years, these devices have been used, almost exclusively, by developing countries in pursuit of balance of payments and industrialization objectives. They have not been used by any nation with a significant automotive industry. Local content requirements are wholly inappropriate for a mature industrial country with global trade interests, such as the United States.

1. Attacking Foreign Local Content Requirements

Moreover, the Reagan Administration is committed to reducing the use of local content schemes by foreign governments. The "Statement of U.S. Trade Policy" that was issued on July 8 by Ambassador William Brock, the U.S. Trade Representative, explicitly calls for removal of foreign domestic content requirements and export performance requirements. Robert Hormats, Assistant Secretary of State for Economic and Business Affairs stated on May 19, 1981 that "we will want to insure that the international community vigorously addresses investment incentives and performance requirements, such as those which mandate local content or exports or a percentage of production, and thereby distort trade."*/ Secretary of State Alexander Haig stated on July 28: "Together we need to insure access to our markets for the products of poorer nations, to broaden developing country participation in the GATT codes, and to address the distortions - such as those imposed by investment performance requirements to international trade".**/ (Emphasis added) Adoption of the UAW proposal would undermine these efforts.

2. An Example for Others

No other developed country except Australia, New Zealand, and Spain, and no country that participates in producing for the world auto market, has local content requirements for automobiles.***/ U.S. adoption of such measures might easily lead to the adoption of similar measures, or other protectionist actions, by leading U.S. trade partners. This danger was emphasized by the CRS study, which noted that "retaliation against U.S. exports by countries affected could also nullify any gains in both the balance of trade and employment."****/ To underscore this concern, the CRS study repeated the following statement by Senator John Heinz:

> "The intrinsic problem with local content requirements is that they become a two-edged sword. If we have them, they are likely to be applied to our exports. If there are preferable alternatives (to local content requirements), we

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*/ Speech to International Insurance Advisory Council, May 19, 1981.

**/ Secretary of State Haig in testimony before the Subcommittee on International Trade of the Senate Finance Committee, July 28, 1981.

***/ Subcommittee on Trade, Hearings at 32.

****/ CRS Study at 14.

> should adopt them, because the list of countries imposing very stiff local content requirements is growing daily and it is costing us jobs."*/

3. An Invitation to Other Industries

Finally, direct legislation to protect the automobile industry, such as the UAW is proposing, would lead to a flood of requests by other U.S. industries for legislated protection. During the past fifty years, the Congress rarely has legislated specific trade barriers for industrial sectors. To do so now would undermine the integrity of the U.S. laws that the Congress has enacted to deal with excessive or unfair trade competition, such as the "escape clause" provisions in section 201 of the Trade Act of 1974, the U.S. antidumping and countervailing duty laws, and section 301 of the Trade Act of 1974. It is not in the interest of the Congress to undermine the statutory schemes that it has developed largely for the purpose of deflecting direct political pressures for the erection of trade barriers, and to invite such pressures through the enactment of this misguided proposal.

B. Local Content Requirements Would be Inefficient, Costly, and Inflationary

1. The Same Effect as Quotas

The local content requirements that are being proposed by the UAW would operate like quotas. It probably would be necessary to impose formal import quotas in order to enforce the limits of 200,000 and 500,000 units per year for manufacturers that did not utilize the requisite "North American content." Even if some other means of enforcement (such as fines) were used, the effect would be similar to a quota because in most cases manufacturers that did not meet the "North American content" requirements would voluntarily limit their sales in the U.S. market. Thus the UAW proposal would have the same effect as an import quota of 1.52 million units from all sources, based on 1980 sales volumes.*/ This is much more restrictive than the "voluntary" export restraint by the Japanese that is now in effect. Moreover, the local content requirements of the UAW proposal presumably would be permanent in order to provide incentives for investment in the U.S. market. Thus the negative effects would cumulate over time.**/

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*/ Ibid, citing Bureau of National Affairs, "Trade Policy: Heinz Cites Need for Tough Stance on Trade Reciprocity, Considers Section 201 Bill," U.S. Import Weekly, August 5, 1981 at A-22.

2. Direct Inflationary Effects

Even if the content requirements led to additional production facilities within the U.S., inefficiency and inflationary cost increases would result. The direct measure would be the additional cost of U.S. production as compared to the importing of autos, with appropriate adjustment for quality differences. If these costs were negligible, then the content legislation would be unnecessary.

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*/ Calculated by holding Toyota, Datsun and Honda to 200,000 units each, and assuming no additional exports from unrestrained suppliers.

**/ Further inefficiency would result as import demand would be diverted to marginal suppliers, and as foreign producers upgrade their product composition within the quantitative limit.

The CRS study points out that part of this cost differential is attributable to higher wages in the United States, part to lower U.S. labor productivity, and part to other cost disadvantages.*/ The CRS study concludes that U.S.-produced automobiles cannot be price competitive with Japanese automobiles without some major cost-cutting by U.S. firms, and that "one way to lower costs is to procure more original equipment abroad":

> ". . . [O]ne auto industry analyst stated that if local content requirements were imposed in 1981, some U.S. companies, such as Ford and Chrysler, would not have the money to tool up to build the components they now import. Chrysler buys engines from Japan and Germany and will buy them from France. Chrysler would have been unable to produce K-cars in the volume currently existing, if it had not procured the engines from abroad."**/

The CRS study concluded flatly that "local content requirements would harm U.S. automakers directly."***/

3. Indirect Costs

The UAW proposal would isolate the U.S. market from international competition. This would encourage oligopolistic pricing practices in the U.S. market by U.S. firms and by foreign producers attempted to recoup their U.S. investments. The absence of effective international competition would, moreover, permit the UAW to continue to extract wages far in excess of the average for all manufacturing. Currently, wages in the auto sector are 28 percent above the average of all manufacturers.*/

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*/ CRS Study, p. 14, citing David W. Evans, "'Foreign Sourcing' Evident in U.S. Automobile Parts," Congressional Record, May 20, 1981 at E2472-73.

**/ *Id.* at 15, citing testimony by James Harbour in House Committee on Banking, Finance, and Urban Affairs, Sub-Committee on Economic Stabilization, "To Determine the Impact of Foreign Sourcing on Industry and Communities," April 24, 1981.

***/ Id. at 14.

An indication of what the UAW proposal would cost consumers can be gained by recalling estimates of the costs of quotas that were made by the Council of Economic Advisors, the Federal Trade Commission, and by Professors Pearson and Takacs for presentation to the International Trade Commission.**/

According to these studies the estimated annual cost to consumers per auto worker reemployed range from $245,000 to $1,125,000. The cost to consumers includes the revenue transferred to the domestic industry. The estimated annual net loss to the U.S. economy, which is somewhat lower, places the cost per auto worker reemployed in a range from $8,600 to $67,952.

In addition, the CRS study concluded that "the bookkeeping required to certify local content would likely impose major costs on automakers and suppliers":

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*/ USITC Publication 1110, December, 1980, at A-41.

**/ "CEA Calculations of the Impact of the Economy of a Japanese Automobile Restraint" Hearings before the Subcommittee on Economic Stabilization of the Committee on Banking, Housing and Urban Affairs, United States Senate, April 3, 1980; "Comments of the Staff of the Federal Trade Commission before the International Trade Commission," October 6, 1980; C. Pearson, "Certain Motor Vehicles and Certain Chassis and Bodies Therefor," Brief of the American International Automobile Dealers Association before the USITC, October 1, 1980.

> "Complete records would have to be kept on each part entering into the manufacture of a vehicle. Most vehicles probably could not have their local content certified in the prototype state at the same time as their emissions and safety certification, because high-volume models are manufactured at different plants in the United States and often will have different sources for the same equipment. Some suppliers, moreover, change during the model year.
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> "Not only the final manufacturer but the supplier might be required to keep track of the local content of his product. Otherwise, automakers could "launder" imported parts through domestic suppliers. Going a step further, not only domestic auto suppliers, but the suppliers of the auto suppliers also use imported materials in their production process. Separating domestic and foreign content and recording it at each level of production would be an extremely costly operation.*/

C. Domestic Content Requirements are Unnecessary and Contrary to the Longer Run Interests of the U.S. Auto Industry

1. Problems Other Than Imports

In November, 1980, the International Trade Commission determined that imports were not a substantial cause or threat of serious injury to the U.S. auto industry. Instead, the Commission found that recession, high interest rates, and the shift in consumer demand toward small fuel efficient cars as a result of the increase in fuel prices were the principal causes of Detroit's distress.**/ Local content requirements would be completely irrelevant to these problems.

Moreover, the International Trade Commission found that import restrictions were not necessary for domestic restructuring of the U.S. auto industry. Commissioner Stern was explicit on this point: "The plans underway for restructuring the industry address many of the industry's problems and do not depend in any demonstrable fashion on import relief.*/ It follows that further restriction of imports, beyond that accomplished by the VER, would not address the short or longer run problems of the industry, nor contribute to their solution.

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*/ CRS Study at 17-18.

**/ USITC Publication 1110, December, 1980.

2. Solutions Already in Progress

Detroit is already restructuring its product line to meet consumer demands. A recent Transportation Department Study projects that average fuel economy for U.S. built cars will increase from 18.6 mpg in 1978 to 31.0 mpg in 1985; that small cars will move from 37 percent of U.S. production in 1978 to 67 percent in 1985, and that the present proportion of U.S. cars with 4 cylinders will increase from 10 percent in 1978 to 62 percent in 1985.**/ The House Ways and Means Subcommittee on International Trade estimates that U.S. capacity to produce small, fuel efficient cars will increase from 1.75 million in 1980 to 4.0 million in 1982, and to 11.1 million in 1985.***/

This conversion is proceeding without local content requirements. It was given a boost with the VER arrangement that will generate additional revenues for U.S. automakers. And it has been further supported by regulatory reforms undertaken by the Reagan Administration and the very significant tax reductions that have recently been enacted. In short, domestic content legislation is not needed to support conversion of U.S. plants toward small, fuel-efficient autos.

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*/ USITC Publication 1110 at 151.

**/ U.S. Department of Transportation, The U.S. Automobile Industry, 1980, January, 1981.

***/ House Committee on Ways and Means, Subcommittee on Trade, Auto Situation: 1980.

3. Local Content Requirements Counterproductive

Local content regulations enacted now might well be harmful for three reasons. First, in the unlikely event that the measure led to a massive transfer of auto production from abroad to the United States, it could create an enormous expansion of U.S. small car capacity. Thus U.S. producers would then face strong competition in the domestic market from foreign firms physically producing in the U.S., as well as substantial continued competition from imports remaining at or below the 200,000 per firm level.*/ The result of that competition might well discourage G.M., Ford, and Chrysler from completing their conversion, leaving them in a still weaker international competitive position.

Second, local content requirements would severely penalize foreign firms, such as Volkswagen, Honda and Nissan, which have or are establishing production facilities in the United States. Volkswagen produced 177,000 vehicles in the U.S. in 1980, but required approximately 91,000 imported vehicles to round out its product line. A local content requirement of 75 percent would be virtually impossible to achieve, especially if imported parts and components are accounted for. Honda is in the same position. Its new U.S. assembly plant requires substantial imports, and it is critical to import additional models to fill in a complete product line. Similarly, Nissan's new facility for producing light trucks in Nashville, Tennessee, will depend heavily upon imported components. Commissioner Stern concluded that a remedy based on domestic content would in fact discourage foreign investment, basing her conclusion on confidential submissions from Volkswagen and Honda.*/

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*/ Additionally, establishing foreign facilities in the U.S. would aggravate an already critical bottleneck in the machine tool industry, hampering conversion by U.S. firms. USITC Publication 1110 at 161.

Third, local content requirements would adversely affect U.S. producers' prospects in the emerging world car industry. All five U.S. producers (including Volkswagen) currently import automobiles and/or small pickup trucks. For example, GM imports a small pickup from Isuzu (in which it has 34 percent ownership), and has in the past imported the Opel from Japan and Germany. Ford imports Courier trucks from Toyo Kogyo of Japan (25 percent ownership). Chrysler imports two trucks and two autos from Mitsubishi (15 percent ownership). AMC imports two autos from Renault, which controls AMC.**/

Trade in parts and components by domestic manufacturers is also substantial. Table 4.8, prepared by the U.S. Department

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*/ USITC Publication 1110, at 162.

**/ USITC Publication 1110 at 165. See also CRS Study at 14-15.

Table 4.8

FOREIGN SOURCING - RECENTLY-ANNOUNCED COMMITMENTS BY U.S. AUTOMOBILE MANUFACTURERS TO PURCHASE FOREIGN-MADE COMPONENTS FOR USE IN DOMESTIC VEHICLES PRODUCTION

Automobile Manufacturer	Description of Component	Intended Use	Manufacturing Source	Approximate Number of Components	Period
G.M.	2.8 liter V-6	Cars	GM de Mexico	<400,000/year	1982-
	2.0 liter L-4 with transmission	Mini trucks	Isuzu (Japan)	100,000/year	1981-
	1.8 liter diesel L-4	Chevette	Isuzu (Japan)	small numbers	1982-
	1.8 liter L-4	J-car	GM de Brazil	250,000/year	1979-
	THM 180 automatic transmission	Chevette	GM Strasbourg (France)	~250,000/year	1979-
Ford	2.2 liter L-4	Cars	Ford-Mexico	<400,000/year	1983-
	Diesel L-4	Cars	Toyo Kogyo	150,000/year	1983-
	2.0 liter L-4	Mini trucks	Toyo Kogyo	<100,000/year	1982-
	2.3 liter L-4	Cars	Ford de Brazil	~50,000/year	1979-
	Diesel 6 cyl.	Cars	BMW/Stegr	100,000/year	1983-
	Turbo-diesel/4 cyl.	Cars	BMW/Steyer	-	1985-
	Manual transaxles	Front Disc Cars	Toyo Kogyo	100,000/year	1980-
	Aluminum Cylinder heads	1.6 liter L-4	Europe, Mexico	-	1980-
	Electronic Engine control devices	Cars	Toshiba	100,000+/year	1978-
	Ball Joints	Cars	Musashi Seimibu	1,000,000/year	1980-1984
Chrysler	L-6 and V-8 engines	cars	Chrysler de Mexico	<100,000/year	early 1970's
	2.2 Liter L-4	K-body	Chrysler de Mexico	<270,000/year	1981
	2.6 Liter L-4	K-body	Mitsubishi	1 Million	1981-85
	1.7 Liter L-4	L-body (Omni)	Volkswagen	1.2 Million	1978-82
	1.6 Liter L-4	L-body	Talbot (Peugeot)	400,000 total	1982-84
	2.0 Liter Diesel V-6	K-body	Peugeot	100,000/year	1982-
	1.4 Liter L-4	A-body (Omni replacement)	Mitsubishi	300,000/year	1984-
	Aluminum Cylinder Heads	2.2 liter L-4	Fiat		
AMC	Car components and power train	AMC-Renault	Renault in France and Mexico	300,000/year	1982-
VW of America	Radiators, Stampings	Rabbit	VW de Mexico	250,000/year	1979-
	L-4 diesel and gas	Cars	VW de Mexico	300,000 +/year	1982-

SOURCES: Compiled from Automotive News, Ward's Engine Update, Ward's Automotive Report, American Metal Market, Detroit Free Press, and Japan Economic Journal.

of Transportation, provides a description of U.S. producers' imports of engines, transaxles, ball joints, cylinder heads and other components.

Domestic content legislation would be a step in the wrong direction as far as solving the domestic auto industry's principal problem - its inability to produce cars of equal quality to imports at equal cost. Domestic content rules would make domestic automobile production even more costly than it is today, exacerbating the non-competitive posture of U.S. auto makers.

While differences in labor costs between U.S. and Japanese-made automobiles are largely offset by transportation expenses, there remains a cost difference estimated at approximately $1,000 due to higher Japanese productivity, more efficient supply systems and better management techniques. Imposing domestic content requirements on U.S. manufacturers would insulate U.S. labor from foreign competition by limiting use of imported components, and guarantee a permanent cost disadvantage for U.S. auto companies.

The resulting isolation would rule out any possibility that domestic companies could become competitive in world markets, where much of all future automobile sales growth will occur.

By general consensus, internationalization of auto production is the wave of the future, and U.S. firms must participate in order to survive in the global car market. Dr. Marina Whitman, Chief Economist for General Motors, has stated: "An open trading environment also serves the long-term interests of major U.S. producers - including auto producers - which need open trade to rationalize their production on a global basis. U.S.-based multinational firms would be adversely affected both by domestic trade barriers that hinder the flow of parts and components in a global industry, and by foreign retaliation that could restrict access to markets abroad."*/ Commissioner Stern, in considering import barriers, argues that GM, AMC, Chrysler, and Ford may be made worse off by import relief in the U.S. market. "Furthermore, there are good reasons to believe that relief would be inimical to the interests of most other producers [i.e., GM, Ford, AMC, Chrysler], because they have already become so highly integrated on an international scale.**/

In summary, U.S. auto firms are inextricably bound to the international auto market in terms of financing, profit generation, imported models, imported parts and components, and global production and distribution. They might not survive a measure that would cleave U.S. production from the international market place, and contribute to fragmentation of the remaining market.

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*/ Challenge, May/June 1981 at 42.

**/ USITC Publication 1110 at 163.

III. Effect of UAW Proposal Upon U.S. International Obligations

A. The Proposals Would Cause the United States to Violate Its Obligations Under the Most-Favored Nation Provisions in Article I of the GATT

The UAW proposes to count both Canadian and U.S. components for purposes of establishing "North American content." This would violate U.S. obligations under the most-favored nation (MFN) provisions of the GATT in two ways.

First, the quotas of 500,000 and 200,000 units per year would not apply to manufacturers using primarily Canadian content. For example, a manufacturer that used 91 percent Canadian content, or 51 percent Canadian and 40 percent U.S. content, would escape the quota that would be applied to a manufacturer that used the same proportions of Japanese or Italian content. Similarly, a manufacturer using 75-90 percent Canadian content (or U.S. and Canadian content in combination) would be able to sell between 200,000 and 500,000 automobiles per year in the United States; but a manufacturer that used the same proportions of French or British content would not be allowed to sell more than 200,000 units annually in the United

States. This would constitute blatantly discriminatory preferential treatment of "Canadian" products as compared with the treatment accorded to products of other nations.

Second, the proposal would violate U.S. MFN obligations under the GATT because it would strongly encourage automobile manufacturers around the world to purchase Canadian components. Both this incentive for the purchase of Canadian products and the exemption of "Canadian" manufacturers from the proposed quotas would violate directly the MFN obligations of the United States that are set forth in Article I(1) of the GATT, which states:

> "With respect to customs, duties and charges of any kind imposed on or in connection with importation or exportation. . . and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraph 2 and 4 of Article III,*/ any advantage, favor, privilege or immunity granted by any contracting party to

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*/ Paragraph 4 of Article III states in pertinent part as follows:

> "4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin in respect to all laws, regulations, and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use." (emphasis added)

Because Article I incorporates by reference Article III(4), the most-favored nation obligation set forth in Article I encompasses those activities that are listed in Article III(4), i.e., "laws, regulations, and requirements affecting. . . internal sale, offering for sale, purchase, transportation, distribution or use."

> any product originating in or destined for any other contracting party *shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties*."
> (emphasis added)

Certainly the counting of Canadian components in determining "North American content" for purposes of applying the quotas proposed by the UAW would be an "advantage, favor, privilege, or immunity" conferred upon products originating in Canada with respect to ". . . rules and formalities in connection with importation and exportation. . . " and with respect to "requirements affecting. . . internal sale. . . " That "advantage, favor, privilege, or immunity" would be denied to the products of other nations. In addition, the artificial incentive that the proposals would provide for the purchase of Canadian products would be a special "advantage, favor [and] privilege" with respect to U.S. requirements affecting internal sale.

These violations of U.S. MFN obligations would not be covered by the waiver that the GATT contracting parties granted to the United States and Canada on December 20, 1965,*/ in order to permit those countries to carry out the U.S.-Canadian Automotive Products Agreement. This waiver was not a blank check for the United States to grant any future preferential treatment to Canadian automotive products. The waiver, in fact, *only* permitted the United States and Canada to eliminate then-existing tariffs on their bilateral trade in certain automotive products, without extending such duty free treatment to automotive products of other nations. The operative paragraph of the GATT waiver that was granted to the United States provides as follows:

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*/ [1966] 1 U.S.T. 1372, T.I.A.S. No. 6093 (entered into force provisionally, Jan. 16, 1965, and definitively, Sept. 16, 1966).

> "The Government of the United States, notwithstanding the provisions of paragraph 1 of Article I of the General Agreement, is free _to eliminate the customs duties at present imposed on_ automotive products of Canada without being required to extend the same tariff treatment to like products of any other contracting party."[*]

The following excerpt from the preamble to this waiver underscores the intention of the GATT contracting parties that the waiver was to be limited to scope and was to cover only the elimination of tariffs:

> "Considering, moreover, that the Government of the United States accepts that the facilities granted in paragraph 1 below should not be used in a way to prejudice the interests of other contracting parties _and that it is not its intention to cause imports into the United States market of automotive products imported from other sources_. . . "[**] (emphasis added)

Because this waiver does not cover the favorable treatment that would be accorded to Canadian products under the UAW proposal, the proposal would cause the United States to be in violation of its obligations under Article I of the GATT.*/ The consequences of this violation are discussed in Section 6 below.

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[*] General Agreement on Tariffs and Trade, _Basic Instruments and Selected Documents_, 14th Supp. at 37.

[**] Id. at 38.

B. The "North American Content" Provisions Proposed by the UAW Constitute Internal "Mixing Requirements," Which are Prohibited by Article III(5) of the GATT**/

Article III(5) of the GATT states as follows:

> "No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulations must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principle set forth in paragraph 1. (emphasis added)

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*/ Vice Chairman Michael J. Calhoun reached essentially the same conclusion in his opinion accompanying the report of the U.S. International Trade Commission on Certain Motor Vehicles and Certain Chassis and Bodies: "the waiver granted by the contracting parties to the United States for its discriminatory implementation of the Autopact was clearly a waiver of the obligations concerning customs treatment imposed upon the United States under Article I:1 of the General Agreement. The contracting parties seemed to consider the Autopact to be limited to tariff treatment. No mention was made of Article XXIV (relating to customs unions and free-trade areas). The preamble to the waiver and the waiver itself repeatedly referred to 'duty free treatment' and 'customs duties.' Further reading leads to the conclusion that the waiver was granted to further the international rationalization of production, provided the rights of other contracting parties are protected." (USITC publication 1110,

Footnote continued on next page

**/ The CRS Study also reached this conclusion. CRS Study at 10.

Paragraph 1 asserts, in pertinent part, that

> "[t]he contracting parties recognize that . . . laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production." (emphasis added)

These provisions prohibit, among other things, "mixing requirements," which are a device for protecting domestic production by requiring that imports or domestic sales of a particular product contain a specified proportion of local content. The "North American content" requirements that are being proposed by the UAW are precisely such devices. Insofar as the proposal would require the use of high proportions of U.S. content in imported automobiles, it would directly conflict with Articles III(5) and II(1) of the GATT, which are quoted above. Insofar as the proposal would require or permit the use of Canadian content in automobiles that are imported into the United States, it would directly conflict with the Article III(7) of the GATT, which states as follows:

> "No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied to such a manner as to allocate any such amount or proportion among external sources of supply."

Footnote continued from previous page

December 1980 at 46-47). Agreement with this view is strongly implied in the opinions of USITC Chairman Bill Alberger and Commissioner Paula Stern, who together with Vice Chairman Calhoun comprised the majority of the Commission in the automobile case. (*Id*. at 13 and 101-103.)

The consequences of violating U.S. obligations under Article III of the GATT also are discussed in Section D below.

C. The Proposal Would Require the United States to Violate Its Obligations in Article XI of the GATT Not to Impose Quotas or Quantitative Restrictions Upon Imports Except in Carefully Limited Circumstances*/

As was described above, the proposal probably would require the application of import quotas to automobile manufacturers on the basis of the proportion of "North American content" in the manufacturer's fleets.

Such import quotas are flatly prohibited by Article XI(1) of the GATT, which states:

> "*No prohibitions or restrictions other than duties*, taxes or other charges, *whether made effective through quotas*, import or export licenses, *or other measures, shall be instituted or maintained* by any contracting party on the importation of any product of the territory of any other contracting party. . . " (emphasis added)

There are certain exceptions to this prohibition upon the use of quotas and quota-like restrictions, but none of these exceptions would cover the local content requirements and accompanying quotas that are called for by the UAW proposal.

Quotas that fall within the exceptions (and thus, unlike those proposed by the UAW, are permissible) are required by Article XIII of the GATT to be administered on a nondiscriminatory basis. The operative paragraph of Article XIII states as follows:

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*/ The CRS Study also reached this conclusion. CRS Study at 10.

> "No prohibition or restriction shall be applied by any contracting party on the *importation of* any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third countries or the exportation of the like product to all third countries is similarly prohibited or restricted." (emphasis added)

The preferential treatment that the proposal would accord to Canadian manufacturers of vehicles and parts would contravene directly this provision. Thus not only would the proposal necessitate the use of quotas that are prohibited by GATT Article XI, but also it would require the use of discriminatory quotas in further violation of the GATT Article XIII.

D. The Proposal Would Constitute a Nullification or Impairment of Benefits Accruing to Other GATT Contracting Parties and Thus Would be Successfully Challenged Under Article XXIII of the GATT

Article XXIII of the GATT permits contracting parties to initiate formal complaint proceedings whenever any direct or indirect benefit to the complaining party under the GATT is being "nullified or impaired" as a result of:

> "(a) the failure of another contracting party to carry out its obligations under [the] agreement, or
>
> (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of the agreement, or
>
> (c) the existence of any other situation . . . "

These broad criteria would permit contracting parties that would be affected by the UAW proposal, principally Japan and the European Communities, to bring formal GATT complaints against the United States both on the ground that the proposal specifically violated several U.S. obligations under the GATT, and on the ground that the proposal "nullified or impaired" GATT benefits to those countries regardless of whether the proposal violated a specific GATT obligation of the United States.

As a result of such challenges, the GATT would form a panel of 3-5 experts to receive documents and to hear arguments of all parties and to issue a determination with respect to the U.S. practice. There can be no reasonable doubt that a GATT panel would find the UAW proposal to be in violation of several U.S. obligations under the GATT, as described above, and would also find that the proposals nullified or impaired GATT benefits to other contracting parties. Specifically, the benefit that would be nullified or impaired would be the reasonable expectation of other contracting parties that the U.S. import duty rate for automobiles, which was "bound" (or guaranteed) at 2.9 percent for 1981 with a gradual reduction to 2.5 percent by 1987, was undermined by the imposition of the "North American content" requirements and quotas necessary to enforce those requirements. It would not be difficult to show that the trade of Japan and the EC had been adversely affected by the proposal.

As a result of such a finding, the GATT panel or its parent body, the GATT Council, might recommend that the United States repeal the UAW proposal. Failure to act upon such a recommendation could result in retaliation by Japan and the EC in the form of import restrictions upon such U.S. exports as agricultural products, agricultural and mining equipment, and power-generation equipment, office machines, computers, semiconductors and integrated circuits, telecommunications equipment, and aircraft. Because the proposal would affect billions of dollars worth of non-Canadian exports to the United States, retaliation against the United States could be expected to affect billions of dollars worth of U.S. exports.

Even if retaliation were not formally authorized and implemented for several years following a finding by a GATT panel, the dispute resulting from the unsatisfied panel finding would be an enormous irritant in U.S. economic relations with its major trade partners and a symbol of U.S. protectionism that would strongly encourage trade-restrictive actions by other nations.

E. The Proposal Would Require Renegotiation of the U.S.-Canadian Agreement Concerning Automotive Products

The U.S.-Canadian Automotive Agreement also contains a local content provision. Annex B of the Agreement provides that, in order to be considered "Canadian" products and thus to be eligible for duty-free entry into the United States, automotive products from Canada must not have more than 50 percent foreign (i.e., non-Canadian or non-U.S.) content. The UAW proposal would make a nullity of that provision by effectively requiring automobiles imported from Canada to have at least 75 percent U.S. or Canadian content if the manufacturer sold more than 200,000 units annually in the U.S. market, or at least 90 percent U.S. or Canadian content if the manufacturer sold more than 500,000 units annually in the United States.*/

F. The Proposal Would Violate Provisions of the U.S.-Japan Treaty of Friendship, Commerce, and Navigation

The UAW proposal would violate provisions of the U.S.-Japan Treaty of Friendship, Commerce, and Navigation.**/ That treaty, which has been in effect since 1953, specifies the following rules with respect to MFN and national treatment:

Article XIV

> "1. Each Party shall accord most-favored nation treatment to products of the other Party, . . . with respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation.

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*/ This point also was noted in the CRS Study. CRS Study at 8-9.

**/ T.I.A.S. 2863.

Article XVI

> "1. Products of either Party shall be accorded within the territories of the other Party, national treatment and most-favored nation treatment in all matters affecting internal taxation, sale, distribution, storage and use."

As is discussed above, the UAW proposal would violate the MFN principle in at least two ways: first, by treating Canadian automobiles more favorably than other foreign automobiles with respect to requirements for entry into the U.S. market; and second, by encouraging the sale of Canadian components around the world. The MFN principle that is set forth in the U.S.-Japan Treaty of Friendship, Commerce, and Navigation is essentially the same as the MFN principle that is expressed in Article I of the GATT.

IV. Conclusion

As is demonstrated above, the UAW proposal to apply "North American content" requirements to automobile manufacturers with substantial sales in the U.S. market would be unnecessary and ineffective in helping the U.S. auto industry, and would be a disastrous trade policy measure. The proposal would cause the United States to violate several of its international obligations, and would provoke trade retaliation by foreign governments against U.S. exports. In short, this is a special relief proposal that would be of dubious benefit to UAW members in the United States and Canada, but that would do great harm to U.S. automobile companies, U.S. consumers, other U.S. industries and their workers, the U.S. economy as a whole, and U.S. international economic relations.

Mr. McElwaine. I will ask Mr. Connelly to testify.

Mr. Connelly. As Mr. McElwaine indicated, I am an automobile dealer from Cincinnati and dealer, chairman of AIADA.

Mr. Chairman, our objective is a restored and healthy domestic automobile industry. Not until Detroit factories are working overtime again, and the unemployed autoworkers are back on the job, will our industry be safe from protectionist attacks.

For this reason we are here before you today, to ask the committee to address the root causes of the domestic industry's depression, which lie in massive investment policy failures over past decades. These investment decisions have been brought about, in many instances, by the effect and influence of trade-distorting international investment incentives and performance requirements.

For the past two decades, the domestic industry has ignored the capital requirements of its U.S. factories. In 1979 the consequences of these years of neglect suddenly came home to roost, when Detroit found itself with an obsolete manufacturing plant, outdated and old-fashioned product, and a cumbersome, unwieldy management system. Galvanized into action by the sudden loss of more than one-quarter of their market, they plunged into the most massive investment program in the history of any industry, in order to make up for past neglect.

The U.S. industry was the only functioning car industry in the world 35 years ago. In 1964 we made 80 percent of all the automobiles produced in the world. At the start of the 1960's we still produced half of the world's cars.

Total world automobile production has increased by 73 percent in the 15 years since 1965. Obviously, the United States has not kept pace with that growth; U.S. manufacturers, however, have. In fact, a very large portion of that growth has been accounted for by production increases on the part of the overseas affiliates of U.S. companies.

The problems of the domestic automobile industry have not been caused by the sale of imported automobiles in this country, but by a massive hemorrhaging of capital and jobs to other nations from our own industry. Suggestions that we deal with the problems of the industry by restricting imports, or by adopting domestic content laws ourselves, would only worsen these problems by guaranteeing that the U.S. automobile industry would remain permanently noncompetitive in the world market where a restoration of competitive ability is vital for the long-term health of the industry.

I congratulate this committee on undertaking an overview of the entire trade picture, so that we can deal successfully with the basic causes of our industry's ills, rather than focus on the simple panaceas of protectionism and isolationism that proved so misguided and destructive in the thirties.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF EDWARD G. CONNELLY

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For the past two decades, the domestic industry has ignored the capital requirements of its U.S. factories. In 1979, the consequences of these years of neglect suddenly came home to roost, when Detroit found itself with an obsolete manufacturing plant, cutdated and old-fashioned product and a cumbersome, unwieldy management system. Galvanized into action by the sudden loss of more than one-quarter of their market, they plunged into the most massive investment program in the history of any industry, in order to make up for past neglect.

Thirty-five years ago, the U.S. industry was the only functioning car industry in the world. In 1964, we made 80 percent of all the automobiles produced in the world. At the start of the 1960's we still produced half of the world's cars.

From 1965 until the present, however, domestic manufacturers have increased their production by only 15 percent. In the same period of time, Canadian production has more than doubled, French output has doubled, German production has increased by 35 percent, Italian manufacturers have grown 45 percent, and Japanese production has increased by a massive 400 percent.

Total world automobile production has increased by 73 percent in the 15 years since 1965. Obviously, the United States has not kept pace with that growth. United States manufacturers, however, have. In fact, a very large portion of that growth has been accounted for by production increases on the part of the overseas affiliates of U.S. companies.

The picture of the United States as a mature market has obviously influenced the investment decision of American manufacturers. There have been other influences. There has been a virtual worldwide auction of new automotive plants, with nations competing with each other in piling incentive on incentive to acquire the jobs and production capacities such plants represent.

These incentives include direct cash grants, tax advantages, accelerated write-offs, and low-cost loans. The United States has not competed in this auction. Instead, our tax income, as well as direct and indirect foreign tax credits, provide a powerful disincentive for the subsidiaries of automotive manufacturers to return their growing overseas profits to this country for investment here. For many years, foreign profits have been reinvested abroad, with the consequence of even greater profits abroad, and, therefore, further reinvestment abroad.

Meanwhile, in the United States, several factors combined to discourage domestic investment. The necessity of meeting Federal regulations and standards consumed much of the funds otherwise available for investment. And the economies of scale created by manufacturing millions of cars built on the same concept and design used year after year made U.S. manufacturers reluctant to effect radical changes in their output by sacrificing profits in the short run.

The problems of the domestic automobile industry have not been caused by the sale of imported automobiles in this country, but by a massive hemorrhaging of capital and jobs to other nations from our own industry. Suggestions that we deal with the problems of the industry by restricting imports, or by adopting domestic content laws ourselves would only worsen these problems by guaranteeing that the U.S. automobile industry would remain permanently non-competitive in the world market where a restoration of competitive ability is vital for the long-term health of the industry.

I congratulate this committee on undertaking an overview of the entire trade picture, so that we can deal successfully with the basic causes of our industry's ills, rather than focus on the simple panaceas of protectionism and isolationism that proved so misguided and destructive in the thirties.

Thank you.

Chairman GIBBONS. I thank you for bringing this to my attention. I really wasn't aware that the American automobile manufacturer had made as large an investment overseas as you have brought out here. That is an interesting new addition to my fund of knowledge.

Your contention is had they not made that investment, they could have penetrated those markets anyway, as the Japanese have penetrated not only our market but other world markets, is that right?

Mr. McElwaine. Yes, sir.

Chairman Gibbons. I remember about 2 years ago there was quite a flurry on this committee because I think in Mr. Vanik's district Ford was closing down an engine plant and they opened another engine plant in Mexico. Your contention is that was done not through economic decisions but that the Government of Mexico intervened and made that decision a viable decision for Ford, is that right?

Mr. McElwaine. I think you will find, Mr. Chairman, in the vast majority of decisions to locate plants abroad, there was a considerable amount of incentives offered by the host government. In many cases, including both outright grants as well as accelerated tax write-offs, tax holidays, these incentives were sufficient to attract the capital investment to that country.

Chairman Gibbons. That sounds just like a bounty described in our basic countervailing duty laws. I am surprised no one has brought a case. I can see why you all won't bring a case, but why won't somebody else have brought a case?

Mr. Connelly. I think it is almost like a bounty, Mr.Chairman. In our written testimony we refer to this situation as a virtual worldwide auction of new automobile plants with nations competing with each other and piling incentive upon incentive to acquire the jobs and industrial capacities such plants represent.

Mr. Fisher. One case against Canada was the Michelin tire case and it ended up with countervailing duty of about 7 percent.

It is difficult to translate in terms of countervailing the incentive given to entice the local industry. How do you equate a capital incentive to a tariff?

Chairman Gibbons. It doesn't have to be a tariff. Under our countervailing duty laws, it is a bounty——

Mr. Fisher. I agree.

Chairman Gibbons. It looks to me like you have an open and shut case on say Ford closing down a plant in Ohio and opening up one for the manufacture of engines in Mexico, the Mexican Government having published the export requirement, and I imagine that we could probably trace some subsidies through. Did the Mexican Government in that case give Ford any subsidy? They gave them access to the American market. That is bounty enough for me.

Was there anything else involved in it we know of?

Mr. McElwaine. Our understanding is that there are considerable tax incentives involved in the establishment of plants in Mexico. There was a Commerce Department study which was referred to in our written testimony which found that an average of 26 percent of all U.S. affiliates overseas had received one or more incentives to invest in those countries, 20 percent of them receiving tax concessions, 8 percent receiving tariff concessions, 9 percent receiving direct subsidies and 5 percent receiving other types of incentives.

The direct subsidies and the larger concessions were made to the larger corporations. When you get into the area of an automobile factory, you are talking about the largest possible type of industrial plant, and they in turn were getting the largest concessions.

Chairman **Gibbons**. You know, I have talked to manufacturers that say, we are opening a plant in *x, y, z* country, and they say, first, we are not going to reexport to the United States, but apparently in this Mexican hat dance down there, there was a quid pro quo; you have to export.

Mr. **McElwaine**. That is fairly standard, Mr. Chairman, in many countries. You will find today if you buy a Ford—go to your local Ford dealer and buy a Ford motor car, in many of the cases the car that you get will have a Brazilian engine and a French transmission. There is also 1 chance in 10 that it was assembled in Canada. There is no label on it that says where the parts came from or where it was assembled, but that is what the statistics are showing.

The factories in Brazil and France were both built with substantial government subsidies and in Brazil, at least, with a requirement for a substantial export percentage. The Ford Motor Co. has a very large factory in Spain, heavily subsidized by the Spanish Government, again with substantial requirements that they export 60 percent of their product, I believe, and a good part of that product is coming back to the United States.

Chairman **Gibbons**. Well, that ought to stop. Would you agree?

Mr. **Bailey**. Mr. Chairman, I am delighted to note and support your reaction here today. I just want you to know I am behind you 1,000 percent and, as somebody who has been crying in the wilderness for a couple of years, I am delighted to see your interest in it. I hope we can do something about it.

Chairman **Gibbons**. Mr. Frenzel?

Mr. **Frenzel**. Thank you, Mr. Chairman.

I want to thank the panel for its testimony. I found it enlightening too.

You indicate that apparently a long-term solution is to achieve a general agreement on investment practices, but I assume that that takes a while to do under the best of circumstances, and that for the short term you are looking for either relief through 301, as suggested by Chairman Gibbons, or some other relief mechanism or pressure point.

Is that correct, or am I noticing this exactly?

Mr. **McElwaine**. I think perhaps some of the earlier testimony was along those lines, Congressman Frenzel—we have not endorsed any short-term solutions here, primarily because these factories that we are talking about are in place. And they are producing. They are not going to be torn up and carried back into the United States.

It is unfortunate that we didn't have some kind of policy in effect when these factories were being built in these other countries, but they are there, and I know of no short-term solution to that effect.

Mr. Fisher is perhaps more versed in this field than I am and he might have a comment.

Mr. **Fisher**. Yes, Mr. Frenzel. We are looking at section 301 as the possible short-term solution. In this context we associate ourselves with the LICIT testimony, and in particular with a bill introduced already, which is before this committee, by Representative Schulze of this committee, H.R. 4407, which would reform section 301's jurisdiction to make it clear that it covers investment.

Now it just has the words "U.S. Commerce" and the issue is that U.S. commerce covers such unfair investment practices as performance requirements. We wholeheartedly hope that 301 would be reformed to remove whatever ambiguity might exist at this point.

Mr. FRENZEL. Thank you for that information.

Mr. CHAIRMAN,. Mr Schulze has been involved in a study of this matter for some time. He has a number of questions that he would like to put to the panel. At this point I ask unanimous consent that he be allowed to put them in writing and that the panel might respond to them as it best determines to do so.

Chairman GIBBONS. Without objection.

Mr. FRENZEL. If you are supporting a general agreement on investment practices, how about a general agreement on tax policy?

Mr. MCELWAINE. I think the two are synonymous.

Mr. FRENZEL. I do too.

One of the members of this committee, the gentleman from New York, Mr. Conable, has been sounding that call since about 1971, suggesting that you have some sort of currency vote and reasonable rules on trade. That is all very well, but it wouldn't mean any kind of equality in the market unless you do something with tax investment policy. I think that your statement here has been very helpful.

I would like to ask Mr. McElwaine—you indicate that the voluntary restraint agreement by Japan has cost American consumers about $4.5 billion. Can you detail quickly how that works? Are you taking a certain cost per unit estimate and just running it through the units, or do you have a more sophisticated——

Mr. MCELWAINE. It is no more sophisticated than that, but I think it is realistic. The domestic manufacturers raised their prices 3½-percent in anticipation of the Japanese restraint agreement. I think it was announced the day before the Japanese announcement was made public, a 3½-percent increase across the board in the domestic automobile prices at a time when the market was severely depressed and they were offering discounts and rebates on the cars they had in stock.

They suddenly announced a 3½-percent increase, amounting to $350 to $375 a car. Shortly afterwards they raised the transportation price on their car, which is an added hidden cost, from an average of $200 a car to $500 a car, which is yet another increase. What happened with the imported car dealers was that any discounts that were available prior to the May 1 announcement of the Japanese restraints were obviously no longer available after May 1. The dealers simply ceased to discount the cars.

If you go into a Japanese make dealership and look at the sticker on the window, you will find there is a second sticker next to the label. That second sticker will probably say polyglycoat, $175 to $200; undercoating, $175; rustproofing, $180. And then under that it will say additional dealer markup, $500. There is an additional $1,000 added to that price.

Now, we just took all of those things together and multiplied them by the number of cars sold. It comes out conservatively to about $4.5 billion a year.

Mr. FRENZEL. That is only on the imported model?

Mr. McELWAINE. No, imports and domestics. I will say business for both imports and domestics has been so bad for the last month that as a consumer, if you go in and start to bargain, you will find those additional prices starting to come down to the sticker price level now, but that has only happened in the last 6 weeks or so.

Mr. FRENZEL. At the time the restraints were applied, the market was soft and the restraints firmed it up or, rather, firmed up the prices in a market that was already soft?

Mr. McELWAINE. Unquestionably.

Mr. FRENZEL. Have the import manufacturers, particularly the Japanese, tended to ship more expensive cars?

Mr. McELWAINE. That has been a definite development.

As you can see from the Department of Commerce figures, although they have exported fewer cars this year to the United States than they did last year, the dollar value is up very sharply over last year. They are exporting more of the Datsun Maximas and the Toyota Cressidas and fewer of the 210's and the Corollas. It is a natural development that happens any time you are limited in numbers, you are going to ship the cars that have the larger profit margin.

Mr. FRENZEL. And that was inevitable, but it speaks well for their production flexibility that they are able to respond so quickly to that restraint agreement.

Mr. McELWAINE. It is probably more a matter of percentages than it is changing actual production. They were producing that many before, they are just—the cars that are being withheld from shipment are largely among the economy models.

Mr. FRENZEL. Well, I tend to agree with you. I do agree with you fully, that the voluntary restraint has been disastrous for everybody, including the American manufacturers, who no longer have as much of an incentive to compete.

Well, I think the panel has given us some valuable information and some valuable goals that we can work on, and I am thankful to all of you.

Chairman GIBBONS. Mr. Bailey?

Mr. BAILEY. Thank you.

I want to thank the panel particularly. I think we are talking about a world on the verge of a redefinition of what free enterprise means and we are trying to decide the function of government in that definition.

We are trying to realize historically that what has been involved is a deliberate policy development on the part of our country post-World War II to export capital abroad, a policy has developed overseas redefining terms like "investment." They have now really come to dominate issues of trade and investment patterns worldwide, sometimes distorting decent or reasonable resource allocation investments in labor, et cetera.

There is no doubt that a great deal of foreign unemployment over the years by many devices have been exported to this country, depleting resources that we have had available to reinvest. I could not agree with you more, if we are going to talk about the role of tax strucure and what is happening overseas and what has been happening here in terms of investment, resource application, we have not seen the forest for the trees of what has been happening to us.

We are going to have to sit on consumables for a while. We are going to have to talk about playing in our sandbox and under what rules, and we are going to get some reasonable definition so you can quantify and measure these things so that businesses are not drawn abroad.

You mentioned automobiles. The chairman raised the question about automobile companies going abroad, from a business point of view. A great deal of that small car technology was developed by American companies investing abroad. It was developed by us overseas and they were producing automobiles for overseas markets, and as businessmen you can't blame them for that. They were essentially doing what market and free enterprise and good capitalists should in many ways; the distortions of course, as you more or less mention, and I think that has been outstanding from my point of view.

I am delighted with my chairman's interest in it. I think we are going to get into things to open American eyes and I am looking forward to making changes, because I think a lot of foreign businessmen and foreign governments have been laughing for years at American myopia.

Mr. McElwaine. Sometimes I feel like Cato saying "Cartago Delenda Est," at the end of every speech, but for the past 4 or 5 years, testifying before this committee, we have said repeatedly that one of the great problems of the domestic auto industry is the fact that they have been unable to repatriate earned capital from abroad without facing heavy U.S. taxes on those profits.

We have asked in testimony after testimony before this committee that since this is the tax-writing committee, the Ways and Means Committee, that they consider a moratorium for a specific period of time on taxation of repatriated earnings from abroad by U.S. corporations to permit them to bring back home some of the earnings that they are holding overseas. The amounts have been guessed at, speculated at. All I can say, is that in the Ford Motor Co. annual report issued this spring; it revealed that Ford Motor Co. had $50 million in cash in the United States, which for a corporation the size of the Ford Motor Co. is walking-around money. Meanwhile, they are sitting on $2.5 billion abroad.

Mr. Bailey. Could I interrupt to ask you to do one thing in your comments?

The difficulty goes now to addressing what you can policy-wise to redress imbalances in the system that have raised expectations around which institutions and foreign policies have been built.

And how did you do it without looking like you are making war on foreign governments in effect? Because we have sat and acquiesced so long; for example, in addressing the issues of financial packages.

We have had testimony in the last couple of days about the role of financial packages. Can you give us concrete ideas on how to address this thing without setting off trade wars and incredible reactions.

Mr. McElwaine. On the matter of taxation of repatriated earnings, the United States is the only industrial nation in the world which taxes repatriation of its own companies.

Mr. Bailey. I do not mean that specifically. I just meant, given the overall nature of the problem, you are talking about integrated changes involving a multitude of policy problems. The approach to social welfare is very much affected by these policies here and abroad. People are finally beginning to see that; for instance, if you are talking about their steel policy or their financial policy.

I am just absolutely delighted with what you have brought forward. We are going to have to go further than that.

Chairman Gibbons. Maybe we ought to give them a year to bring home the repatriated earnings and let them face the tax after that.

Mr. Bailey. Mr. Chairman, that is such a small part of the overall problem. The biggest difficulty with our country is the way we discourage reinvestment and tax capital. That is my opinion.

Mr. Frenzel. If we let them bring home the capital tax free, maybe we should have a prohibition against them buying Marathon oil with it.

Mr. Bailey. It should not go against policy goals, yes.

Chairman Gibbons. Mr. Pease?

Mr. Pease. One question.

Your principal recommendation seems to be that we seek some sort of international agreement on fair treatment of investment.

Do I read you correctly on that?

Mr. McElwaine. Yes, sir.

Mr. Pease. I think that is helpful, but it appears to me that that is an extraordinarily difficult task to bring off, given the problems of definition, the problems of time consumption for international negotiations, and so on.

That looks to me like a 1-, 5-, 6-year process. In the meantime, what is going to happen to U.S. auto manufacturers? They are in a deep depression now. Is there any hope at all for those companies over the next 3 or 4 or 5 years?

Mr. McElwaine. We expect quite confidently a substantial turnaround in the domestic automobile industry situation by the middle of 1982. I have to preface that prediction with the fact that I made the same prediction just about a year ago for the year 1981.

Our feeling is that it can't hold off much longer. They are making an improved product, they are making more fuel-efficient cars. They have tightened up their operation considerably.

What we need is a turnaround in interest rates and the economy, and I do feel that the domestic industry is going to have some pretty good years. Most of the analysts are predicting between 12 and 15 million cars in 1983, 1984, 1985, which would be all-time record years. I think there is a good likelihood if we can get the economy on its feet again that this will happen.

The best thing that could happen to the American industry is a healthy economy, not trade restrictions or tax rebates, just a decent economy.

Mr. Connelly. Even a stabilization of interest rates would be helpful. We notice on the showroom floor, as we get close to closing a deal. The person knows that they have gotten the best price, but then the interest, the cost over a period of time comes again. I think we could sell the car if the people were convinced they weren't going to look foolish tomorrow with the prime going up and down as quickly as it does now. Get the interest rate stabilized, even that would be a tremendous help for us.

Mr. **Pease**. A quick question.

If overall you have a total sales increase over the next 3 years, and I hope you are right in your prediction that they will, what is our prediction as to market shares? Will the market share held by foreign cars increase or decrease in the face of an overall increase for all cars?

Mr. **McElwaine**. Our forecast is that the market share will decrease to somewhere around 20 percent of the market by 1985, and if you have a 12.5 million car market, we will still be selling a very healthy 2.5 million cars, which is more than we have ever sold in our history. So we are optimistic about the number of cars we will sell and about the domestics recapturing some of their market share.

Chairman **Gibbons**. I want to thank the panel. We have to recess just a minute to vote.

Our next witness is also here to comment on automobile problems, and I think you will find it most interesting.

Mr. **Frenzel**. May I ask a quick question?

The automobile buyer, because he is forced to pay a relatively high interest rate forever, really hasn't been subjected to a stable kind of escalation such as the small businessman or the homebuyer. Is the high interest rate a major deterrent for automobile purchase? There is a fair amount of argument on that subject.

Mr. **Connelly**. I know there is and I really believe that it is a major factor.

I also have to say that the price of the car, no matter what the car is, no matter what the manufacturer is is awfully high, but that is a negotiated price. It will still be high when the customer finally leaves the showroom.

However, that is a negotiated price and the customer really believes he got the best price. With the interest rate, I think it is a great factor and a great question mark in the customer's mind.

I think you have to raise that kind of a question mark before you can get people buying cars, get them on the road and get the thing moving again.

Mr. **Frenzel**. So the uncertainty is one of the most——

Mr. **Connelly**. Yes, sir, I sincerely believe that.

Mr. **Frenzel**. Thank you.

Thank you, Mr. Chairman.

[Recess.]

Chairman **Gibbons**. Mr. Hemphill? We welcome you. I am sorry it is so late in the evening. We are interested in your testimony and you may proceed as you wish.

STATEMENT OF JOHN M. HEMPHILL, JR., EXECUTIVE VICE PRESIDENT, J. D. POWER & ASSOCIATES, WESTLAKE VILLAGE, CALIF.

Mr. **Hemphill**. Thank you, Mr. Chairman, and members of the subcommittee.

My name is John Hemphill. I am the executive vice president of J. D. Power and Associates. We are located in Westlake Village, California. We specialize in automotive consumer research, and have for the past several years.

The syndicated projects we conduct range from dealer showroom shopper and early buyer studies for new model introductions, to consumer satisfaction with dealer service during the warranty period, to our ongoing, thrice-yearly national survey and monitoring of the driving population. Clients for our independent studies include virtually all domestic, Japanese, and European car manufacturers, several original equipment and after-market suppliers, and U.S. governmental agencies.

We believe that for the purposes of this committee our independent status and the fact that our principal business is continuously studying and analyzing the U.S. automotive consumer furnishes a unique and objective perspective. My goal in this testimony is to present the consumers' viewpoint concerning the competitiveness of the U.S. automobile industry.

I have attempted to shorten my remarks considerably. I realize the hour is late, Mr. Chairman.

Chairman **Gibbons**. You have plenty of time. Go right ahead.

Mr. **Hemphill**. Whether or not a new car product is competitive depends, in the final analysis, on how well the consumer perceives his/her needs being met in several categories by the product.

According to our most recent national survey, conducted in September-October this year, three factors, dependability, price, and fuel economy, have consistently been the top three car features desired by consumers during the past 3 years.

Ten years ago, features such as appearance/styling and horsepower and acceleration would have received ratings high enough to place them in the top three. Today, value for the money, from the consumer's viewpoint, or competitiveness in the product market, is defined as a reasonably-priced new vehicle that the consumer can rely on to not break down frequently or seriously and furnish good fuel economy.

I will address the following consumer-oriented question in order to assess the current and future competitiveness of the U.S. automobile industry:

How has the consumer and the marketplace changed, and how successful has our domestic auto industry been in meeting competition?

The most significant change in the U.S. automobile market during the past 10 years is the shift from when available products principally controlled or influenced the market, to a situation where consumers are now calling the shots. Rather than product creating demand, the reverse now more accurately characterizes the auto market. To be sure, the fuel shocks during the 1970s and the rising ride of imported cars were significant, but the result is a market dominated by the consumer.

The decade of the seventies was characterized by increasing consumer demand for smaller, more fuel-efficient vehicles. The demand shift was massive and triggered belated product downsizing by domestic manufacturers, and an expanded market share for imported vehicles, especially those from Japan.

In 1970, the U.S. market for new cars was dominated by product in the domestic standard and intermediate size models. Domestic subcompacts held a scant 2 percent share. Imports had the remaining 15 percent of the market [see table 2).

By the time of the first energy crisis in 1973, domestic make subcompacts had already risen to 11 percent of the market, primarily at the expense of the standard and compact sizes. The intermediate and import segments remained steady at near 1970 levels.

The effect of the energy crisis through 1974 and 1975 was a dramatic and sustained decline in market share for standard size domestic models. Only during 1976 and 1977 did the decline level off. This short period of time gave false signals to the domestic automakers eager to see a return to a normal big-car-dominated market. Some down-sizing plans were curtailed or delayed, and others scrubbed by the domestic manufacturers. However, by the end of 1978, gasoline prices had doubled over the preceding 5 years, and there was a growing awareness among American consumers of the dependence on foreign oil.

The fate of the traditional full-size car was sealed as the decade came to a close with the Iranian crisis in April 1979. Imports rose to 22 percent of the market and domestic subcompacts came back strongly to a 13 percent share.

More fundamentally, the automobile market had changed from being dominated by the big three to a market where the consumer had much more variety from which to choose. And their alternatives were being supplied primarily from Japan.

Japanese imports had started the decade being perceived as low-cost, economical transportation. When fuel economy became the central issue in the automotive purchase decision, many consumers turned to the Japanese models and found not only fuel economy, but quality and dependability as well.

Just looking at the past 2 years, according to automotive consumers, imports have improved their products in nearly every category, while the ratings for products of domestic manufacturers have declined. To be more specific, in mid-1979, on the heels of the Iranian crisis, we asked a representative sample of the driving population to evaluate American-, Japanese-, and European-built automobiles. We asked the same question again 2 years later, in mid-1981. Only small improvements in three out of the eight categories were given to American-built cars. Japanese cars were evaluated as being better than 2 years ago in seven out of eight categories.

Furthermore, the Japanese cars were given the highest ratings and greatest improvements in the very same categories that American-built cars received their most negative ratings. This was true for such important attributes as overall quality of workmanship, advanced ideas in engineering, dependability, minimal repairs, and value for the money. Note that included in these attributes are precisely the features most desired by new car buyers, and perceived as determining whether an automobile is competitive or not.

Data from our more recent surveys completed only a few months ago shows a much higher incidence of delivery problems among the domestic nameplates [see table 4]. In this survey we sampled 1,000

1980 model owners of each of the major nameplates, primarily to measure customer satisfaction with dealer service. Again, absence of delivery problems, reliability, and trouble-free operation were the overriding factors in consumer satisfaction. If the customer did not have to return to the dealer, he was more satisfied.

The types of delivery problems experienced by the domestic model owners show where the Japanese products display an edge over the domestics. Paint, misaligned body parts, water leaks, body damage, and rattles or squeaks all relate to the "fit and finish" category. Collectively, they add up to 37 percentage points for the domestics and only 15 percentage points for the Japanese models that are shipped across the Pacific.

Looking at reported mechanical problems during the first year of ownership, we see almost the same incidence levels, 53 percent for domestic models and 37 percent for the Japanese models.

To provide a composite rating, we developed a customer satisfaction index based upon our 1980 model owner survey [see table 5]. Out of 20 nameplates surveyed, the Japanese captured 5 out of the top 6 nameplates. The other was Mercedes-Benz. The key to their success has been product quality in terms of how few product or mechanical problems the buyers of their models experience.

Consumers know that the U.S. auto industry is in trouble, and they have views about the industry, its management and engineers, and about the extent to which Government should furnish assistance to or protection for domestic manufacturers.

Consumers tend to put the blame on management for the problems of the domestic auto industry. They feel that there has been too much emphasis on short-run profits, and not enough attention paid to innovation, quality, and technology advances. Their perception is that management is trying to build small cars with big car characteristics. This results in consumers perceiving them as cheap and token efforts to meet the import competition.

The driving population is also decidedly negative toward Government intervention to help the ailing domestic auto industry. In a study we conducted earlier this year only one-third of the driving public favored restrictions of any kind on the number of Japanese vehicles imported to the United States. Nearly half said that the automobile market should be open and freely competitive, or that it is up to the U.S. automakers to produce more competitive cars. Only one out of four suggested the Japanese manufacturers be required to build assembly plants in the United States.

The implication is that consumers knew that restrictions, voluntary or otherwise, would cause car prices to rise and their shopping choices to be constrained should supply be limited.

As we concluded in a special report earlier this year on voluntary or imposed restrictions: Restraints on imported cars from Japan will be perceived as rewarding the insensitivity and inefficiency of the domestic auto industry and consumers realize they will have to pay for it.

The driving public is also less than enthusiastic about further assistance to Chrysler Corp. Only 19 percent feel that the Government should grant Chrysler the remainder of its $1.5 billion loan limit, while 41 percent feel the Government should not get further involved in Chrysler's problems.

For the most part, 24 percent, consumers would like the Government to arrange a Chrysler merger with Ford, while only a small percentage would like to see the Government encourage a foreign firm buy out Chrysler.

In conclusion, the American automotive consumer knows that domestic car manufacturers have been trying to catch up with their import competition. Domestic automakers are feeling the double whammy of a severely depressed industry and a weak competitive position.

Imports, particularly the Japanese, have offered products more in tune with what consumers wanted: Fuel efficiency, dependability, and value for their money. In addition, imports have provided attractive styling and sporty handling in a car that is convenient and fun to drive.

The results of study after study we perform demonstrate that the U.S. automakers are increasingly competing among themselves and internally. Their new downsized introductions merely retain customers who otherwise would defect to imports.

The Japanese imports are a moving target for the domestic manufacturers. Their reputation for producing what consumers want is now well established, but they are not cruising on their laurels. The emphasis on quality built into production continues as they refine their products and seek technological improvements. The Japanese have known that as cars become smaller they are harder to differentiate from an appearance standpoint; thus, reputation for quality and dependability have been cornerstones of their strategy.

At the same time, Japanese companies are becoming full-line car and truck manufacturers. New models including micro-mini cars, small vans, and fuel-efficient sports utility vehicles are coming to the U.S. market in the near future. From economical base models to expensive sedans and sports cars, they are widening the gap between themselves and domestic automakers in product as well.

Add to these factors the cost advantage, which can run $1,500 to $1,800 for even the smallest models, and one must conclude that the domestic auto industry is losing competitive position in the U.S. market.

Trade restrictions or other forms of government subsidy are clearly not the answer. The current voluntary restrictions have worsened an already weak auto sales situation by restricting supply, raising prices, and significantly postponing product improvements. The competitive position of the U.S. automakers has improved not one bit, while the consumer is bearing the burden of restrictions.

The world passenger car industry is now going through a revolutionary era, after decades of slow evolutionary change. Low-cost production is more important than ever in meeting the demands for new, fuel-efficient technology in the 1980's and beyond. The answer lies in the expansion of world trade in automotive production and technology. Joint ventures, licensing agreements, and mergers are the inevitable paths the domestic automakers must follow aggressively in order to survive in the U.S. and world markets.

Along with this there must be fundamental internal changes in the way U.S. car companies are structured and operated. Decisions need to be made regarding the appropriateness of continuing so many car lines with so few distinguishing characteristics. Management and organization should be geared and attuned to a longer term horizon than 10-day sales reports. Market analysis needs to be more concerned with matching product to the consumer. New relationships must be forged between the technical, the planning, and the research components of the domestic automakers. Efficiency in distribution needs to be achieved. An end to the adversary relationship between management and labor is essential in order to establish a partnership for meeting fierce competition now and in the years ahead.

As I stated at the beginning, it is consumers' perception of available products and their needs that must be understood and catered to, and domestic automakers have simply not done as good a job at either compared to their competition.

Thank you very much.

[The prepared statement follows:]

Statement of John M. Hemphill, Jr., Ph. D., Executive Vice President, J. D. Power & Associates, Westlake Village, Calif.

THE CONSUMERS' VIEWPOINT
ON THE
COMPETITIVENESS OF THE
U.S. AUTOMOBILE INDUSTRY

Mr. Chairman and Members of the Committee:

My name is John M. Hemphill, Jr. I am the Executive Vice President of J. D. Power & Associates, founded in 1968, as a national marketing information organization specializing in automotive consumer research. Our firm is an independent research company that regularly conducts our own studies of the automotive market, and syndicates the results to private and public organizations. The syndicated projects we conduct range from dealer showroom shopper and early buyer studies for new model introductions, to consumer satisfaction with dealer service during the warranty period, to our on-going, thrice yearly national survey and monitoring of the driving population. Clients for our independent studies include virtually all domestic, Japanese, and European car manufacturers, several original equipment and aftermarket suppliers, and U.S. governmental agencies. We believe that for the purposes of this Committee our independent status and the fact that our principal business is continuously studying and analyzing the U.S. automotive consumer furnishes a unique and objective perspective. My goal in this testimony is to present the consumers' viewpoint and perspective concerning the competitiveness of the U.S. automobile industry in terms of their attitudes, opinions, and behavior.

"COMPETITIVENESS ACCORDING TO THE AUTOMOTIVE CONSUMER"

Buying a new car is usually a complex decision and an important event in the lives of most consumers, involving an impressive sum of money being committed to their personal form of transportation. Only few other "investment" purchases create such a state of intense consideration.

Whether or not a new car product is "competitive" depends, in the final analysis, on how well the consumer perceives his/her needs being met in several categories by the product.

According to our most recent national survey, conducted in September-October 1981, the ability of a new car to furnish "dependable/trouble-free operation" is the single most important feature sought in a new car, followed by "purchase price" and "fuel economy". These three factors, dependability, price, and fuel economy, have consistently been the top three car features desired by consumers during the past three years. The rank order of them has changed, however, as economic and fuel supply conditions have changed (see Table 1).

TABLE 1

Features Most Important When Selecting a New Car for Purchase

	Sep/Oct 1981	April 1980
Dependability/Trouble-Free Operation	31%	24%
Low Purchase Price	17	11
Fuel Economy	13	33
Safety	9	8
Other	30	24
	100%	100%

Source: J. D. Power & Associates
Automotive Consumer Profile

Ten years ago, features such as appearance/styling and horsepower and acceleration would have received ratings high enough to place them in the top three. Today, value for the money, from the consumer's viewpoint, or competitiveness in the product market, is defined as a reasonably-priced new vehicle that the consumer can rely on to not break down frequently or seriously and furnish good fuel economy.

Frequently the consumer wants more than this, and such factors as performance, styling, and passenger comfort are considered. But the basics for most new car consumers start with a product with a reputation for quality, fuel efficiency, and an affordable price. This is what "competitiveness" means to the consumer.

I will address the following consumer-oriented questions in order to assess the current and future competitiveness of the U.S. automobile industry:

- How has the consumer and the marketplace changed, and how successful has our domestic auto industry been in meeting competition?
- How well do domestic manufacturers' products compare to their competition according to consumers?
- To what extent do domestic vehicles compete with imports?
- Finally, what are the prospects for the domestic auto industry in view of changing consumer preferences and needs?

SHIFT FROM PRODUCT TO CONSUMER-DRIVEN MARKET

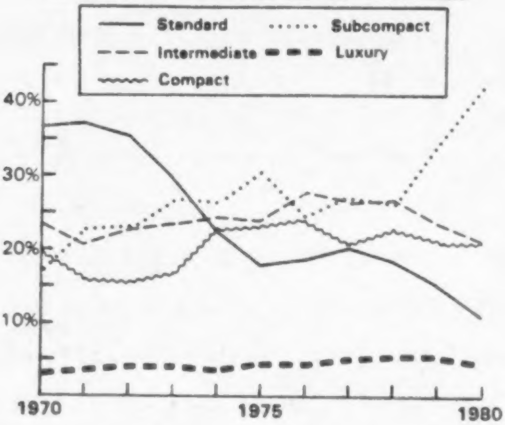
The most significant change in the U.S. automobile market during the past ten years is the shift from when available products principally controlled or influenced the market, to a situation where consumers are now calling the shots. Rather than supply creating demand, the reverse now more accurately characterizes the auto market. To be sure, the fuel shocks during the 1970's and the rising tide of imported cars were significant, but the result is a market dominated by the consumer.

The decade of the 70's was characterized by increasing consumer demand for smaller, more fuel-efficient vehicles. The demand shift was massive, and triggered belated product downsizing by domestic manufacturers, and an expanded market share for imported vehicles, especially those from Japan.

In 1970, the U.S. market for new cars was dominated by product in the domestic standard and intermediate size models, together capturing 63% of total unit sales. Compacts accounted for 20%, while domestic subcompacts held a scant 2% share. Imports had the remaining 15% of the market (see Table 2).

TABLE 2

New Car Sales By Market Class
(1970 - 1979)



By the time of the first energy crisis, in 1973, domestic make subcompacts had already risen to 11% of the market, primarily at the expense of the standard and compact sizes. The intermediate and import segments remained steady at near 1970 levels.

The effect of the energy crisis through 1974 and 1975 was a dramatic and sustained decline in market share for standard size domestic models. Only during 1976 and 1977 did the decline level off. This short period of time gave false signals to the domestic automakers eager to see a return to a "normal" big-car-dominated market. Some downsizing plans were curtailed or delayed, and others scrubbed by the domestic manufacturers. However, by the end of 1978, gasoline prices had doubled over the preceding five years, and there was a growing awareness among American consumers of the dependence on foreign oil.

The fate of the traditional full-size car was sealed as the decade came to a close with the Iranian crisis in April 1979. Imports rose to 22% of the market and domestic subcompacts came back strongly to a 13% share.

An even greater phenomenon than the rise in import market share during the 70's was the growth in the Japanese share of the import segment. From the beginning to the end of the decade, Japanese imports virtually exchanged places with Volkswagen in import market share. Following ten years of unfaltering growth, Japanese share of the import market had risen to 70% while German share fell to 21%.

More fundamentally, the automobile market had changed from being dominated by the "Big Three" to a market where the consumer had much more variety from which to choose. And their alternatives were being supplied primarily from Japan.

The success of the Japanese in the U.S. market can be attributed to several factors. While domestic manufacturers began to react to the shift in consumer demand with downsizing programs and new model development programs in the latter part of the decade, they were generally too little and too late. Japanese imports had started the decade being perceived as low cost, economical transportation. When fuel economy became the central issue in the automotive purchase decision, many consumers turned to the Japanese models and found not only fuel economy, but quality and dependability as well. More on this later.

By the end of the decade, domestic manufacturers had entered the automobile market with a variety of small, fuel-efficient vehicles, but American consumer perceptions of Japanese imports had, by that time, changed significantly. Consumers felt that the Japanese had more experience in building small cars than the Americans, and that Japanese small cars were reasonably priced and possessed superior quality compared to American small cars. Additionally, consumer movements in the 1970's developed a strong resentment on the part of consumers toward the Detroit manufacturers.

CONSUMER PERCEPTIONS ON THE COMPETITIVENESS OF DOMESTIC AUTOMOBILES

According to automotive consumers, during the past two years, imports have improved their products in nearly every category, while the ratings for products of domestic manufacturers have declined. This is particularly disheartening since during this time domestics have been introducing, at considerable cost, their several new downsized models on the market.

To be more specific, in mid-1979, on the heels of the Iranian crisis, we asked a representative sample of the driving population to evaluate American, Japanese, and European built automobiles. We asked the same question again, two years later in mid-1981. The results are shown in Table 3.

TABLE 3

Changes in Ratings Of Car Manufacturers By Country Of Origin

Phase I (May/June, 1979) Versus Phase V (Feb/March, 1981)

	American Built			Japanese Built			European Built		
	ACP		Absolute Change	ACP		Absolute Change	ACP		Absolute Change
	I	V		I	V		I	V	
Value For Money	3.03	2.95	-.08	3.14	3.29	+.15	3.11	3.13	+.02
Dependability/ Minimal Repairs	3.04	2.99	-.05	2.80	2.96	+.16	2.85	2.87	+.02
Ability To Design Sub-Compact Cars	2.74	2.64	-.10	3.77	3.87	+.10	3.61	3.57	-.04
Passenger Comfort	3.80	3.83	+.03	2.72	2.67	-.05	3.04	3.04	--
Fuel Economy	2.47	2.51	+.04	3.77	3.92	+.15	3.50	3.47	-.03
Advanced Ideas In Engineering	3.09	3.07	-.02	3.36	3.51	+.15	3.44	3.46	+.02
Overall Quality Of Workmanship	2.80	2.68	-.12	3.10	3.33	+.23	3.37	3.45	+.08
Availability Of Parts & Service	3.95	3.98	+.03	2.45	2.58	+.13	2.29	2.35	+.06
Styling Or Appearance	N.A.	3.72	--	N.A.	3.11	--	N.A.	3.35	--
Products Priced As Low As Possible	N.A.	2.29	--	N.A.	2.38	--	N.A.	2.06	--
Eight Category Average*	3.12	3.08	-.04	3.14	3.27	+.13	3.15	3.17	+.02

*Excludes Styling Or Appearance And Products Priced As Low As Possible

Sample Size: ACP I (5082) ACP V (2861)

Source: J. D. Power & Associates
Automotive Consumer Profile

Consumer eight category average ratings by consumers declined for American built cars and improved for both Japanese and European built cars. Only small improvements in three out of the eight categories were given to American built cars (passenger comfort, fuel economy, and availability of parts and service). Japanese cars were evaluated as being better than two years ago in seven out of eight categories. More significant is the fact that in five of these same seven categories, the Japanese cars had even higher ratings two years ago than American built cars.

Furthermore, the Japanese cars were given the highest ratings and greatest improvements in the very same categories that the American built cars received their most negative ratings. This was true for such important attributes as "overall quality of workmanship," "advanced ideas in engineering," "dependability/minimal repairs," and "value for the money". Note that included in these attributes are precisely the features most desired by new car buyers, and perceived as determining whether an automobile is "competitive" or not.

Granted these are the perceptions of a cross-section of the car owning public and many of them are reflecting what they see or hear in the news media and general press. But, J. D. Power & Associates conducts a variety of other surveys to determine what the car owners themselves think about the particular cars they are driving.

We conduct an annual survey of new car buyers by specific nameplates to determine their level of satisfaction with their car during the first year of ownership. We have found through this survey technique that there are two key measures that have a demonstrable effect on customer satisfaction:

1. Showroom and Delivery Condition of the Vehicle

and

2. Dependability and Trouble Free Operation During the First Year of Ownership

For the past ten years, through our independently funded studies we have been tracking owner experiences with new model cars. We have found that 55% of all new model owners report having one or more mechanical problems during the first year of ownership. On the average, 60% of domestic new model owners reported a mechanical problem compared with only a 35% incidence among Japanese imports.

Data from one of our more recent surveys completed only a few months ago shows a much higher incidence of delivery problems among the domestic nameplates (see Table 4). In this survey we sampled 1,000 1980 model owners of each of the major nameplates primarily to measure customer satisfaction with dealer service. Again, absence of delivery problems, reliability, and trouble-free operation were the overriding factors in consumer satisfaction. If the customer did not have to return to the dealer, he was more satisfied.

TABLE 4

INCIDENCE OF SELECTED DELIVERY PROBLEMS ON 1980 MODELS

	DOMESTIC MODELS	JAPANESE MODELS
EXPERIENCED PROBLEMS (Net)	53%	33%
Paint	12%	3%
Instrumentation Problems	11	6
Rough Engine/Hard Starting	11	5
Misaligned Body Parts	7	3
Water Leaks	7	2
Body Damage	6	4
Transmission	6	2
Rattles/Squeaks	5	3
Upholstery	5	2
Air Conditioner	3	5
Radio	3	4
Electrical System	3	2

Source: CUSTOMER SATISFACTION WITH DEALER SERVICE
August, 1981

The types of delivery problems experienced by the domestic model owners show where the Japanese products display an edge over the domestics. Paint, misaligned body parts, water leaks, body damage, and rattles or squeaks all relate to the "fit and finish" category. Collectively, they add up to 37 percentage points for the domestics and only 15 percentage points for the Japanese models that are shipped across the Pacific.

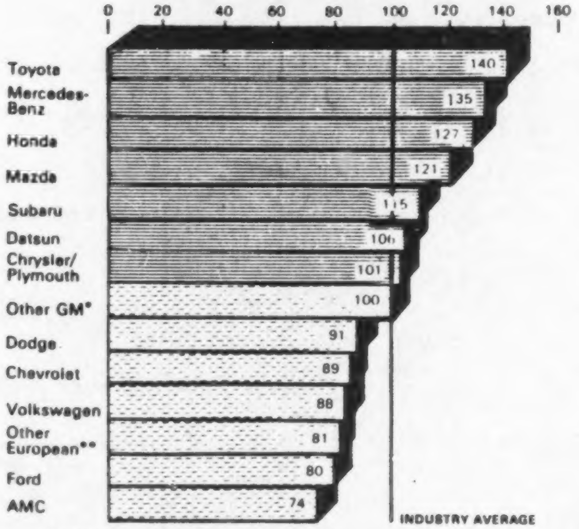
Looking at reported mechanical problems during the first year of ownership, we see almost the same incidence levels, 53% for domestic models and 37% for the Japanese models. These are problems that occurred after delivery. Engine related problems account for nearly half of the mechanical problems reported by the domestic model owners. Also, the domestic models had a significantly higher percentage of transmission and body related problems when compared with the Japanese models.

To provide a composite rating, we developed a customer satisfaction index based upon our 1980 model owner survey (see Table 5). The Japanese captured five out of the top six nameplates. The key to their success has been product quality in terms of how few product or mechanical problems the buyers of their models experience. The top Japanese car companies have made great strides in improving their dealer service and parts networks during the past 10 years. But one must remember that good service and customer satisfaction result from product quality built into the car during production.

TABLE 5

WHO RATES THE HIGHEST AND LOWEST IN DEALER SERVICE?

(Dealer Service Satisfaction Index)



*Includes Buick, Cadillac, Oldsmobile, and Pontiac
**Includes BMW, Fiat, Renault, and Volvo

Source: *Survey Of Customer Satisfaction With Dealer Service*
J. D. POWER & ASSOCIATES

Consumer Perceptions on the Auto Industry

Consumers know that the U.S. auto industry is in trouble, and they have views about the industry, its management and engineers, and about the extent to which government should furnish assistance to or protection for domestic manufacturers.

In a recent survey we found that one-third of the driving population feels that American auto industry managers are inferior to their Japanese counterparts. Only 11% say that American auto executives are superior to Japanese. The rest are neutral. American engineers, on the other hand, are not perceived as being inferior. In fact, when we asked about U.S. engineering ability, the overwhelming majority stated American engineers could build a better all around car than the Japanese, if management would give the proper direction and commitment. Consumers are ambivalent on whether car assembly line workers are the principal reason for the poorer quality of American built cars (37% agree that they are, while 27% disagree, and 30% are neutral).

Consumers tend to put the blame on management for the problems of the domestic auto industry. They feel that there has been too much emphasis on short-run profits, and not enough attention paid to innovation, quality, and technology advances. Their perception is that management is trying to build small cars with big car characteristics. This results in consumers perceiving them as cheap and token efforts to meet the import competition. Their in-use experience certainly tends to confirm their perceptions

The driving population is also decidedly negative towards government intervention to help the ailing domestic auto industry. In a study we conducted earlier this year only 1 out of 3 members of the driving public favored restrictions of any kind on the number of Japanese vehicles imported to the U.S. Nearly half (47%) said that the automobile market should be open and freely competitive, or that it is up to the U.S. auto makers to produce more competitive cars. Only 1 out of 4 suggested the Japanese manufacturers be required to build assembly plants in the U.S.

When asked to indicate reasons why the domestic auto industry has been experiencing declining sales, compared to Japanese imports, 36% indicated that "domestic car manufacturers have not responded to consumer needs as well as the Japanese import manufacturers." Another 27% believe "imported Japanese cars are more fuel-efficient, and offer better value for the money than the domestics". Only 6% felt that "imported Japanese cars are the cause of the current problems in the domestic car industry."

The implication is that consumers knew that restrictions, voluntary or otherwise, would cause car prices to rise and their shopping choices to be constrained should supply be limited. As we concluded in a special report earlier this year on voluntary or imposed restrictions: ...Restraints on imported cars from Japan will be perceived by a strong majority of the driving public as rewarding the insensitivity and inefficiency of the domestic auto industry and consumers realize they will have to pay for it.

The driving public is also less than enthusiastic about further assistance to Chrysler Corporation. Only 19% feel that the government should grant Chrysler the remainder of its $1.5 billion loan limit, while 41% feel the government should not get further involved in Chrysler's problems. Thirty percent indicate the government should help Chrysler in arranging a merger with another manufacturer. For the most part (24%), consumers would like the government to arrange a Chrysler merger with Ford, while only a small percentage would like to see the government encourage a foreign firm buy out Chrysler.

Summary and Conclusions

The American automotive consumer knows that domestic car manufacturers have been trying to catch-up with their import competition. But they are not gaining on them. Exacerbated by record low unit sales throughout the industry, domestic automakers are feeling the double-whammy of a severely depressed industry and a weak competitive position.

Economic conditions during the past five years have aided and abetted import competition. Inflation and escalating fuel costs have made the consumer highly selective, skeptical, and wary, especially about committing a large sum of cash to the purchase of a vehicle. Prospective buyers today, largely because of economic conditions, are much more informed and knowledgeable about the new cars they consider for purchase and they have many more alternatives from which to make their selection. Imports, particularly the Japanese, have offered products more in tune with what consumers wanted: fuel efficiency, dependability, and value for their money. In addition imports have provided attractive styling and sporty handling in a car that's convenient and fun to drive.

The results of study after study we perform demonstrate that the U.S. automakers are increasingly competing among themselves and internally. Their new downsized introductions merely retain customers who otherwise would defect to imports. New models capture sales from larger domestic models, often from the same make. Younger buyers are increasingly turning to imports, indicating that regaining their loyalty will be nearly impossible for the domestic manufacturers, given the continuing product advances by the imports. Inroads by imports have been greatest in those age groups where population growth will be the greatest.

The Japanese imports are a moving target for the domestic manufacturers. Their reputation for producing what consumers want is now well established, but they are not cruising on their laurels. The emphasis on quality built into production continues as they refine their products and seek technological improvements. The Japanese have known that as cars become smaller they are harder to differentiate from an appearance standpoint; thus, reputation for quality and dependability have been cornerstones of their strategy.

The top Japanese companies are becoming full-line car and truck manufacturers. New models including micro-mini cars, small vans, and fuel-efficient sports utility vehicles are coming to the U.S. market in the near future. From economical base models to expensive sedans and sports cars, they are widening the gap between themselves and domestic automakers in product as well.

Add to these factors the cost advantage, which can run $1,500 to $1,800 for even the smallest models, and one must conclude that the domestic auto industry is losing competitive position in the U.S. market.

Trade restrictions or other forms of government subsidy are clearly not the answer. The current voluntary restictions have worsened an already weak auto sales situation by restricting supply, raising prices, and postponing product improvements. The competitive position of the U.S. automakers has improved not one bit while the consumer is bearing the burden of restrictions.

We should learn from the experience of Australia's protectionist strategy for their auto industry. After 15 years of subsidy their vehicle industry is not in a healthy condition, so concluded a recent study for their government. In brief, it was found that as a result of protection, employment in the auto industry is stagnant, product prices are too high by world standards, innovation and technological advances are not forthcoming, and that other industrial sectors are penalized.

The world passenger car industry is now going through a revolutionary era, after decades of slow evolutionary change. Low cost production is more important than ever in meeting the demands for new, fuel efficient technology in the 1980's and beyond. The answer lies in the expansion of world trade in automotive production and technology. Joint-ventures, licensing agreements, and mergers are the inevitable paths the domestic automakers must follow aggressively in order to survive in the U.S. and world markets.

Along with this there must be fundamental internal changes in the way U.S. car companies are structured and operated. Decisions need to be made regarding the appropriateness of continuing so many car lines with so few distinguishing characteristics. Management and organization should be geared and attuned to a longer-term horizon than ten-day sales reports. Market analysis needs to be more concerned with matching product to the consumer, rather than the reverse. New relationships must be forged between the technical, the planning, and the research components of the domestic automakers. Efficiency in distribution needs to be achieved. An end to the adversary relationship between management and labor is essential in order to establish a partnership for meeting fierce competition now and in the years ahead.

Finally, management should recognize that imports are here to stay, and will improve their competitive postion as long as they continue to offer a product the consumer judges to be superior to their own. As I stated at the beginning, it is consumers' perception of available products and their needs that must be understood and catered to, and domestic automakers have simply not done as good a job at either compared to their competition.

While there are many long term and complex reasons for the serious problems facing the U.S. automobile industry, it serves small advantage to trace the industry's failure to respond to the needs and wants of the consumer and to determine blame for these shortcomings. Likewise, it would now be a grave mistake to attempt to turn the clock back by imposing more artificial restraints on the U.S. automobile market, because it masks the true demand of consumers and will lead to greater misallocation of our vital resources.

Chairman GIBBONS. Dr. Hemphill, I appreciate your statement. I do not want to insult you, but I have never heard of you before, so I want to ask some questions about you. You know, I will accept many of the things that you have said as being what is believed here in the United States. They to a large extent reflect some of my beliefs. But your statement is so powerful—do you belong to the Japanese?

Mr. HEMPHILL. No. In fact, we do a major share of our work for the domestic auto manufacturers themselves. Our position——

Chairman GIBBONS. They must want to shoot you every time you walk into the plant. Nobody likes to hear ill tidings.

Mr. HEMPHILL. No, sir; that is correct. On the other hand, we have been right more than we have been wrong, and we feel that the domestic auto industry is not listening to the consumer well enough or long enough to meet competition. We view our job as to call it like it is, and that will be better for the domestic industry in the long run.

Chairman GIBBONS. How long have you been saying this?

Mr. HEMPHILL. Since about 1973, 1974. We urged the domestic industry before OPEC 1 hit to engage in downsizing plans rapidly. We saw the beachhead that the imports were establishing in California at the time. We saw the compact and subcompact share rising even before OPEC. The domestics, still sentimental about the big car, shrugged off our advice. The import companies, not knowing much about the market, were glad to receive assistance in consulting and consumer research and improve their products as a result. As Mr. Bailey was pointing out about the automakers in other countries, building cars to fit the market, that is what the Japanese did in quite a superior way.

Chairman GIBBONS. You know, I came to Washington about 20 years ago and there were a few Beetles around Tampa, Fla., where I lived. When I came to Washington and started to commute on the parkway to work I was surprised at the number of Volkswagens. I could not figure it out. We had a few in Tampa, not a lot of them. It was a curiosity thing then, but they became very popular. I would talk to people, saying, "Why do you want to ride in that noisy rattletrap?" They said, "It saves a lot of money." At that time gasoline was cheap, 30 cents a gallon, and it did not much impress me. I have watched it grow since then, and while I still drive American cars and will continue to drive them, I have got to admit that the temptation is awful great to go out and buy somebody else's.

Mr. HEMPHILL. The Volkswagen case is an interesting one, Mr. Chairman. The market share that they garnered very quickly in this country resulted initially from, what our research showed, parents buying them for their sons or daughters instead of a used car. They were cheaper, fairly economical, very economical to run and not that difficult to fix. But the share that Volkswagen held during that time, which was close to 70 percent of the import market, has—they have changed places now with the Japanese. Currently they have about 20 percent of the import market and—Volkswagen has 20 percent, the Japanese have 70 percent.

Chairman GIBBONS. What did your research show on that? Why did that happen?

Mr. **Hemphill**. Primarily because of the alternatives Japan was supplying at the time in terms of price advantage, in terms of a more easily available servicing of the cars themselves. But the Japanese have steadfastly given the attention to product quality throughout the seventies that the domestic manufacturers and to a large extent Volkswagen has not given proper attention to.

Chairman **Gibbons**. Mr. Frenzel.

Mr. **Frenzel**. Again I want to thank the witness. I think it is terribly interesting testimony. It is particularly interesting coming from the source of a person who is a customer of the United States—who is a supplier to the U.S. automobile industry. I must agree that the result of the voluntary restraints which we in fact forced onto the Japanese has been very unfortunate, and it has bothered me. But your study here is really terribly interesting when you look at your figures on what the perceptions of cars in the various categories are. The small decline in the conception of how good American cars are and the large increase from a Japanese standpoint is terribly interesting. What do you foresee for the future, or do your figures tell you about the future of the car market? Everybody agrees that we need a little recovery and people will buy cars again, but the last group indicated that we were talking about 1983 and 1984. Do you have any figures that tell you how many cars people are going to buy in 1982 or 1983 or 1984?

Mr. **Hemphill**. We have developed a forecast through the 1980's for the U.S. car market. We are not quite as optimistic as the former testimony. On the other hand, we think that the auto market will be much more robust than econometric forecasters predict. One looks at basic things such as the increase in number of licensed drivers, and that number will increase 15 percent during the eighties, half the rate of the 1970's, but a good, healthy increase. One also looks at the ratio of licensed drivers to vehicles, and that has been climbing toward a 1-to-1 ratio for the past 20 years. The scrappage rates, which we think will remain fairly constant, although people are trying to hold on to their cars longer, we think the cars will be selling at an annual rate of 12½ million units next year, and we will see an average increase of 11.8 throughout the rest of the 1980's.

Mr. **Frenzel**. What do you see for calendar 1982?

Mr. **Hemphill**. We see a total car sales picture of somewhere around 10½ to 11.2 and picking up significantly in late spring of next year. We gage that by our buyer-intention study that we run 3 times each year and have for the past 2½ years. We are seeing buyer intentions edge up in the income categories where new cars are affordable, and this has been for us a fairly good predictor of sales.

Mr. **Frenzel**. I am like Mr. Gibbons. I do not drive a foreign car, but I think I am part of the problem. My car is now entering its 11th year. I do not want to buy. It is not interest rates or fuel economy that is keeping me from buying a new car, it is the base price of the vehicle. I remember what they used to cost when I was a kid and am outraged at the increase, or I guess I have given it low priority in my family purchasing plans. Sooner or later the car will wear out.

Mr. **Hemphill**. Ask any automotive engineer and he will tell you there is just so much life built into a vehicle and it depends on the miles traveled by the driver. You cannot squeeze a lot more miles out of a particular car.

Chairman **Gibbons**. I used to think that, but I have got a Chevrolet station wagon with 140-some thousand miles on it. I got more miles out of the rebuilt transmission than I got out of the original one. It was built on Friday, so I guess it was good I ever got any miles out of it. But I got more out of the rebuilt transmission than out of the original one. Mr. Cole, president of General Motors, told me I should trade it in. I said, "Hell, it took me 50,000 miles to get it running right." My newest car is that 1968 Chevy station wagon.

Mr. **Frenzel**. Getting back to the figures about the increase in new drivers, we got trapped in the increase in family formations too, but it did not cause new homes to be built when economic conditions were such that they could not be built.

Mr. **Hemphill**. The other factor is that population migration patterns are going to the Sun Belt, and those are the areas least serviced by mass transit, so that would be a factor where we see that the need for personal transportation is increasing. You throw on top of that increasing pressure for two income earners in the family.

Mr. **Frenzel**. At a greater rate than the population is growing. One final thought—I am going to yield, because it is not that good a question.

Mr. **Bailey**. There obviously is not enough time. There are some things that I would like to ask you. We do not have time, and I would not ask people to come back after the vote. The things you mentioned about fit and finish I think are correct. Some of the references to decisionmaking by American executives are wrong. I think in fact they were giving consumers what they wanted and made ventures into that market. In fact, their exploits overseas indicates that. If you look at some of the reasons, tax policy, investment policy, et cetera, I think you will come to different conclusions. In any event, I do not disagree with you.

Chairman **Gibbons**. Let me ask you, what do you tell your clients about convertibles?

Mr. **Hemphill**. We were asked by Chrysler about that not long ago. We feel that there is a definite niche in the market for convertibles these days. We do not think it will be strong or big enough to devote a lot of capacity to it.

Chairman **Gibbons**. I have got a 1968 Chevrolet convertible and I almost quit driving it because every time I go into a filling station they want to buy it. People come up on the street and say, "Hey, is that for sale?" There is a tremendous pent-up demand for convertibles. I do not know why they quit making them. I guess they had a good reason.

Mr. **Hemphill**. In that case the trick is to restrict supply of convertibles to the point where they are considered novelties in the marketplace. Chrysler will take advantage of that provided they have the cash to take them through the next year.

Chairman **Gibbons**. Convertibles were looked on in the industry as ragtops and they never sold a lot of them, but they never had any left over at the end of the year. It has to be a hazard to drive it now, because everybody wants to buy it. Every time you stop it someone asks, "Hey, is that for sale?"

Mr. **Hemphill**. I suggest you put the car on blocks and save it for another 10 years.

Chairman **Gibbons**. I intend to drive it for another 10 years. You can stretch these things.

This concludes our testimony for today. We will resume the hearing tomorrow at 9:30 in room 1302, which is upstairs in this same building. Mr. Hemphill, we appreciate you coming all the way from California to be with us here.

[Whereupon, at 5:35 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Tuesday, December 15, 1981.]

U.S. TRADE POLICY

TUESDAY, DECEMBER 15, 1981

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 1302, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Good morning, ladies and gentlemen. Today we continue the oversight hearings of the Ways and Means Trade Subcommittee.

We are interested in what U.S. trade policy is, its planning, its implementation.

This morning we are hearing from the private sector again. We have a distinguished group of witnesses with us. The first witness is Mr. Gordon C. Hurlbert. He is president of Westinghouse Power Systems Co.

Mr. Hurlbert, would you come forward?

STATEMENT OF GORDON C. HURLBERT, PRESIDENT, POWER SYSTEMS CO., WESTINGHOUSE ELECTRIC CORP., ACCOMPANIED BY CLAUDE E. HOBBS, VICE PRESIDENT AND SENIOR COUNSELOR,

Mr. Hurlbert. Am I seated all right, Mr. Chairman?

Chairman Gibbons. Yes. If Mr. Hobbs would like to accompany you, that is fine, too. Maybe he is more comfortable back there.

Mr. Hurlbert. I have a longer prepared statement I would like to put in the record.

Chairman Gibbons. We will put it all in for you, sir.

Mr. Hurlbert. I would like to give some of the highlights of my prepared statement.

Chairman Gibbons. Good.

Mr. Hurlbert. So, Mr. Chairman and Mr. Jones, I am Gordon C. Hurlbert, president of the Westinghouse Power Systems Co. We manufacture hundreds of products which generate, transmit, control, and utilize electricity. The most prominent of these are nuclear steam supply systems, large steam turbine generators, large power transformers, and large power circuit breakers. They are major products required by electric utilities to generate electricity and transmit it to population centers for use.

In addition to our electric utility products, our company manufacturers drives and controls for mass transmit systems, elevators, electric motors, and other controls, as well as hundreds of other products for industrial and commercial use.

Mr. Chairman, I appreciate this opportunity to testify and would like to commend you and the other members of this subcommittee for the thorough hearings you have been conducting on U.S. trade policy. Several administration officials have enunciated good concepts and displayed commendable attitudes toward aspects of U.S. trade policy and the enforcement of U.S. unfair trade statutes.

They have also candidly acknowledged problems which our country confronts, and have expressed constructive intentions to solve some of them.

Unfortunately, our Government's policies and actions have not prevented or curtailed the foreign trade discrimination which has existed for more than 25 years in the large electrical equipment industry. Nor do proposed actions show any prospect of dealing effectively with this most serious problem. The principal products involved are the large items of equipment already mentioned which are used by electric utilities to generate electricity, and to transmit it to major areas of use—steam turbine generators, large power transformers, and large power circuit breakers.

European countries and Japan, with the exception of Sweden, which have the industrial capability to manufacture these products, steadfastly refuse to buy such items from U.S. manufacturers. They can do this because their electric utilities are either government owned, or fully responsive to their governments' policies. Their national equipment manufacturers supply closed home markets insulated from international competition. They recover plant overhead costs, essential research and development expenses, and obtain some profit from high priced domestic sales. They can then make marginal cost, low-priced export sales to third countries and to the world's largest open market, the United States. These exports help them to maintain the employment of highly skilled engineers and manufacturing employees necessary for success with these high-technology products. Even at lower than home market prices, their exports help to provide revenue for meeting the high fixed costs of this volume-sensitive business.

Section 302(c) of the Trade Agreements Act of 1979 called for a report on the economic effects of foreign discrimination against U.S.-made electric equipment and other equipment. This report was submitted to Congress last summer. Section 302(d) called for a report on "Actions the President Deems Necessary to Establish Reciprocity" for large electrical equipment and other equipment. The section 302(d) report was sent to Congress a week or so ago.

Regrettably, the section 302(d) report was not very thorough and in our opinion was not adequately responsive to the congressional intent. We believe the report was unduly limited in its analysis of the effects on U.S. firms and their employees of trade discrimination and lack of access to major foreign markets.

It is not surprising, therefore, that the second report which the Congress mandated in section 302(d), concerning the actions needed to establish reciprocity, is also deficient.

What I can call the good news is that this latter report clearly acknowledges that government-owned entities in Europe and Japan refuse to purchase American equipment and that U.S. exports of heavy electrical equipment would increase in the absence of restrictive foreign government procurement practices.

I am gratified that an administration has finally acknowledged some of the facts we have testified to for nearly 20 years.

Generally speaking, however, the administration now proposes more delay, at least another 2 years of preparations for negotiations which it hopefully expects to begin by January 1984. The section 302(d) report stated that if the United States is unable to obtain the agreement of other developed countries to reduce their discrimination against these products by the beginning of 1985, the administration will once gain recommend to Congress still other "appropriate actions to receive reciprocity." If Congress then takes up to 12 months to act, 4 or more additional years will have passed.

Electrical equipment manufacturers in Europe surely will assume they have a public invitation to continue their trade discrimination against the products under discussion—which will mean markets closed to American suppliers; artificially high home market prices for home market manufacturers; and exports to the American and third-country markets at reduced prices.

Subsidized export credits also pose a threat to our industry here in the U.S. market. Our European competitors are now offering Government-subsidized low-interest financing to induce U.S. utilities to buy their products.

In these days of high interest rates, the prospect of borrowing millions of dollars 5 percentage points or more below the U.S. market rate is a powerful inducement. One U.S. utility has already stated publicly that it is basing its entire purchasing program on these low-interest European loans.

European countries and Japan can be expected also to continue to provide financing in support of their exporters at below world market interest rates.

The revised OECD arrangement will not help U.S. producers to sell to third country markets since there will be no competitive export financing available for American suppliers of electrical equipment during the next few years from the Export-Import Bank or from other sources unless the administration changes its policies.

Let me turn now to the three specific proposals the administration has submitted to the Congress in response to the mandate of section 302(d) of the 1979 act for actions to establish reciprocity in Government procurement in the products of our industry.

The first is to try again to expand the Government Procurement Code's coverage through future negotiations. This option was also discussed, though in far greater and more negative detail, in the earlier section 302(c) report to the Congress. I believe the committee will find that these two reports concede little chance of successful negotiations. Both admit the United States has virtually no negotiating leverage, and neither report proposes effective means of increasing that leverage.

The problems of discrimination against our industry's large utility equipment were a principal part of the incentives for negotiation of the Government Procurement Code.

Despite the fact that the code has reformed most of the Government purchasing practices abroad that our industry complained of, none of the elements of discrimination against our large electrical equipment has been brought under control. The same practices still exist in the procurement of these products. For us nothing has changed.

On the other hand, administration witnesses recently told you that, by and large, the new Procurement Code is working well and is being adequately implemented here and abroad; that many new Government procurement opportunities are being created for U.S. exports. However, there was no mention of the fact that our major products are not covered by the code.

I would like to clarify one important matter. Electric utilities in some European countries are Government owned. But in other countries in Europe, ownership of utilities is varied. In Japan, electric utility companies are predominantly investor owned. Extending coverage of the Government Procurement Code to purchasing of large electrical equipment by electric utility entities in Europe can be an important move toward ending trade discrimination for this equipment. Nevertheless, other steps will be necessary to achieve broad trade reciprocity with all industrialized countries respecting these products.

The second recommendation of the administration is to urge that the Export-Import Bank provide export credit support for financing U.S. exports of products in sectors such as ours which are denied access to foreign industrialized markets. Frankly, I have never seen a more positive effort made by a Cabinet member than the support Ambassador Brock has already given U.S. manufacturing interests, and I am grateful for his willingness to continue advocacy of a larger budget and more responsive lending policies for Eximbank. I only hope he can prevail.

The third and final recommendation of the President suggests that the U.S. Trade Representative "prepare" the analysis necessary to bring a track II complaint under the GATT Subsidies Code.

I urge the committee to examine closely the more thorough and candid appraisal of this option in the earlier, section 302(c) report to the Congress, which gave little basis for optimism.

Track II under the Subsidies Code is essentially a consultative GATT dispute settlement procedure wherein every signatory to the code has an equal vote and voice. It basically requires a judgment on whether the practice complained of is "inconsistent" with the code. Since major countries have refused in the first instance to include under the code entities which use our industry's type of products, the question will likely arise as to whether track II is appropriate for expanding code coverage.

This is what the U.S. Trade Representative's staff said about track II in its first report to Congress:

> It would be difficult to demonstrate such an effect and therefore, the attempt to argue this dispute settlement case under the Subsidies Code would, in all likelihood, be unsuccessful. Furthermore, bringing such an indirect complaint could undermine the Subsidies Code dispute settlement mechanism.

It should be noted that the Code has not been invoked against domestic subsidies and appears more nebulous with respect to them than to dealing with export subsidies. While I believe it is impractical to rely on the track II appraoch as a solution to our problem of discrimination, I nonetheless want to encourage the administration to undertake the track II effort, but not to the exclusion of more practical actions for resolving our problem. The 10-year debacle in a GATT committee over the legality of the DISC under the GATT is scarcely the experience we want to be subjected to as a remedy for our problem of discrimination.

In short, Mr. Chairman, we see virtually no reasonable prospect for success in opening up long closed foreign markets to U.S.-made large electrical equipment under any of the actions proposed by the administration.

We deeply appreciate the cooperation and interest demonstrated by Ambassadors Brock and McDonald and by Secretary Baldrige. We also welcome the administration's espousal before this committee of its "abiding reliance on market forces." We can and would compete effectively worldwide under such conditions. But they do not exist.

We must try to compete against companies who receive artificial protection and financial assistance from their own Governments. I can only hope that our Government will help to bring about the existence of the international market forces it would have us rely on.

Large electrical equipment manufacturing capacity worldwide is already greater than total world demand for these products. Competition for future sales can only intensify. With the major markets—those of the industrialized countries—closed to American manufacturers, the effects of such trade discrimination will become more critical than ever in this capital-intensive, high fixed-cost industry.

Some of the more advanced developing countries are purchasing nuclear plants, fossil-fired steam turbine generators and high voltage transmission equipment such as large power transformers and large power circuit breakers. There is aggressive competition from Europe and Japan to sell them this equipment. With indirect subsidies from high-priced home market sales, and low-cost Government export financing to support our foreign competitors, American electrical equipment manufacturers will remain at a significant competitive disadvantage for the principal business open to it today and in the foreseeable future.

Our frustration is clearly far greater now that the economic circumstances of our industry critically require world market access if we are to remain viable in the manufacture of these products. Endless further international negotiations or the bringing of complaints under nebulous and yet untried provisions of the GATT give us little hope. Instead, they compel us to examine other alternatives.

I believe the only solution now lies in our own Government's effectively increasing our U.S. leverage to remove discrimination against our products in the industrial countries abroad. Such a course would not be without difficulties, but it is all that is left. The course proposed by the National Electrical Manufacturers Association (NEMA) to the administration last summer, but which was not adopted in the administration's report to the Congress, was to impose progressively stronger countermeasures against competition in the United States from closed-market countries until such time as equivalent competitive access to them is established for American manufacturers. NEMA, in brief, proposed that the President establish a set of conditions and a timetable for gradually limiting access to the open U.S. market. These conditions would apply only to those countries not affording equal access for our large electrical equipment to their own markets. Such limitations would be terminated on a country-by-country basis whenever equivalency of opportunity is obtained.

An action our Government can readily take toward solving our problem is to insist that all countries whose markets are closed to American electrical equipment provide our Government specific information on their utilities, equipment purchasing practices, including adequately detailed specifications of equipment purchased, and to be purchased, methods of selecting suppliers, identification of eligible suppliers, prices paid for specific equipment, with enough detail for making price comparisons, terms and conditions of payment, warranties, delivery and installation, and all other aspects of regular commercial transactions of this type. When purchasing of large equipment is carried out secretly, as happens in a number of countries, it is very difficult, if not impossible, for excluded industrial competitors to obtain information sufficient to initiate antidumping actions, countervailing duty actions or other unfair trade actions.

It is even difficult to give congressional committees adequate information about such secret purchasing.

My prepared statement, which is being inserted in the record, makes an additional recommendation requiring foreign supplies to furnish affidavits of nondumping, no subsidies, and no antitrust violations.

Thank you, Mr. Chairman. I will be glad to try to respond to any questions the committee may have.

Thank you, Mr. Chairman, and I will be glad to answer any questions or clarify any parts of my testimony if you would have any questions.

[The prepared statement follows:]

STATEMENT OF GORDON C. HURLBERT, PRESIDENT, POWER SYSTEMS CO., WESTINGHOUSE ELECTRIC CORP.

Mr. Chairman, and Members of the Subcommittee:

I am Gordon C. Hurlbert, President of the Westinghouse Power Systems Company. We manufacture hundreds of products which generate, transmit, control and utilize electricity. The most prominent of these are nuclear steam supply systems, large steam turbine generators, large power transformers, and large power circuit breakers. They are major products required by electric utilities to generate electricity and transmit it to population centers for use.

In addition to our electric utility products, our company manufactures drives and controls for mass transit systems, elevators, electric motors, controls, and hundreds of other products for industrial and commercial use.

I appreciate the opportunity to testify before your Subcommittee today.

Mr. Chairman, I would like to commend you and the other members of this Subcommittee for the thorough hearings you have been conducting on U.S. trade policy. Several of the officials of the Administration have enunciated good concepts and displayed commendable attitudes toward aspects of U.S. trade policy and the enforcement of U.S. unfair trade statutes. They have also candidly acknowledged problems which our country confronts, and have expresed constructive intentions to solve some of them.

Unfortunately, neither the policies nor proposed actions show any prospect of dealing effectively with what is one of our industry's most serious problems. The large electrical equipment industry continues to experience foreign trade discrimination. Our Government's policies and actions have not prevented or curtailed the discrimination which has existed for more than 25 years. The principal products involved are the large items of equipment already mentioned which are used by electric utilities to generate electricity, and to transmit it to major areas of use—steam turbine generators, large power transformers, and large power circuit breakers.

European countries and Japan, which have the industrial capability to manufacture these products, steadfastly refuse to buy such items from U.S. manufacturers. They can do this because their electric utilities are either government-owned, or fully responsive to their governments' policies. Their national equipment manufacturers supply closed home markets which are insulated from international competition. They recover plant overhead costs, essential research and development expenses, and obtain some profit from high priced domestic sales. They can then make marginal cost, low priced export sales to third countries and to the world's largest open market, the United States. These exports help them to maintain the employment of highly skilled engineers and manufacturing employees who are necessary for success with these high-technology products. The exports, even at lower than home market prices, help to provide revenue for meeting the high fixed costs of this volume-sensitive business.

Our company and our industry have testified many times over the years before Congressional committees and Executive Branch departments and agencies on this subject. We presented our problem during the Kennedy Round of MTN, after that Round, during the Tokyo Round, and after the Tokyo Round. Throughout, we have sought to cooperate fully with U.S. negotiators and to provide them with as much support as we could. But discrimination against our products has not diminished.

Following the Tokyo Round, Congress was aware of the failure to achieve meaningful reciprocity in this area. In its review of the outcome of these negotiations, Congress expressed its dissatisfaction and its intent that our problem be solved by provisions in Section 302 of the Trade Agreements Act of 1979. Sec. 302(c) called for a report on the economic effects of foreign discrimination against U.S.-made electric equipment and other equipment. This Report was submitted to Congress last summer. Sec. 302(d) called for a report on "actions the President deems necessary to establish reciprocity" for large electrical equipment and other equipment. The Sec. 302(d) report was sent to Congress a week or so ago.

Regrettably, the Sec. 302(c) report was not very thorough and in our opinion was not adequately responsive to the Congressional intent. It conceded, for example, that the Executive Branch had "great difficulty in obtaining any information . . . on government procurement practices", a fact we find hard to accept, especially in light of the extensive information the Commerce Department has collected and made public on foreign subsidy practices in the steel industry abroad. The Report was also unduly limited, in our opinion, in its analysis of the effects on U.S. firms and their employees of trade discrimination and lack of access to major foreign markets.

It is not surprising, therefore, that the Second Report which the Congress mandated in Sec. 302(d), concerning the actions needed to establish reciprocity, is also deficient.

What I can call the good news is that this latter Report clearly acknowledges that government-owned entities in Europe and Japan refuse to purchase American equipment and that U.S. exports of heavy electrical equipment would increase in the absence of restrictive foreign government procurement practices.

Just prior to the submission of the Sec. 302(d) Report to Congress, the clearest public statement yet made by an Executive Branch spokesman during the many years of our experience with this problem was made to this Subcommittee. An Administration witness on October 30th, in response to queries from Congressman Jones, said:

". . . the conclusion we came to is the European market is closed to American (heavy electrical equipment) competition; that as a result of that, European producers are able to sell domestically at a price sufficiently high to allow them to sell at a lower price in third country markets, and this is very detrimental to our electrical industry." (Galley proof transcript, page 25)

The same spokesman then added:

"If we are closed out in European markets, we have to face subsidized competition in third country markets while at the same time our private market is relatively open to foreign competition, so we will be submitting what actions we deem appropriate to rectify that situation." (Galley proof transcript, page 25)

I am gratified that an Administration has finally acknowledged some of the facts that representatives of our company and our industry have testified to for nearly 20 years, though these conclusions should have extended to Japan as well as Europe.

But my gratification ended there, and my disappointment quickly began. The so-called actions the Administration has just recommended to the Congress are distressingly inadequate. I will discuss the specifics, but, generally speaking, the Administration now proposes more delay—at least 2 years of still further preparations for negotiations which it hopefully expects to begin by January 1984. The Sec. 302(d) Report stated that if the United States is unable to obtain the agreement of other developed countries to reduce their discrimination against these products by the beginning of 1985, the Administration will once again recommend to Congress still another set of "appropriate actions to receive reciprocity." If Congress then takes up to 12 months to act, four or more additional years will have passed.

Electrical equipment manufacturers in Europe surely will assume they have a public invitation to continue their trade discrimination against the products under discussion. During that time, their governments can be expected to keep their electric utility equipment markets closed to American suppliers. They can also be expected to continue to maintain artifically high home market prices for home market manufacturers, thus, as I have already said, helping them to cover plant overheads, helping them to pay for essential research and development, helping them to make profits, and keeping them in position to export equipment to both the American and third-country markets at reduced prices.

Compounding our problem, European countries and Japan can be expected also to continue to provide financing in support of their exporters at below world market interest rates. Even if the rates are not below those called for by the revised OECD Arrangement, these foreign loans will hurt U.S. producers' efforts to sell to third country markets. There will be no competitive export financing available for American suppliers of electrical equipment during the next few years from the Export-Import Bank or from other sources, unless, hopefully, the Administration changes its policies.

Let me turn now to the three specific proposals the Administration has submitted to the Congress in response to the mandate of Sec. 302(d) of the 1979 Act for actions to establish reciprocity in government procurement in the products of our industry.

The first is to try again to expand the Government Procurement Code's coverage through future negotiations. This option was also discussed, though in far greater and more negative detail in the earlier Sec. 302(c) Report to the Congress. I urge the Committee to examine the arguments offered in both Reports. I believe it will find they concede little if any chance of successful negotiations. Both admit the United States has virtually no negotiating leverage under present or foreseeable circumstances, and neither report proposes effective means of increasing that leverage. Both envision a long, drawn-out timetable with little likelihood of success, even assuming other countries might be willing to negotiate in good faith. There is little reason for assurance that such an approach will lead to an expeditious and equitable result.

After no action was taken during the Kennedy Round of MTN with respect to the trade discrimination I am discussing, representatives of our company and of other American manufacturers of large electrical equipment met with personnel of what was then the Office of Special Trade Representative and assisted in drafting the first version of what, more than a decade later, became the Government Procurement Code.

The problems of discrimination against our industry's large utility equipment were a principal part of the incentives for the negotiation of this Code.

The electric utility systems of several European countries were nationalized after World War II and became government entities. Ironically, however, after more than 10 years of negotiating effort, first in the OECD and then under GATT, the European electric utility entities were omitted from the coverage of the Government Procurement Code. The large electrical equipment those entities purchase is still subject to the same trade discrimination as before, during and after both the Kennedy Round and the Tokyo Round of Multilateral Trade Negotiations.

Despite the fact that the Code has reformed most of the government purchasing practices abroad that our industry complained of, none of the elements of discrimination against our large electrical equipment has been brought under control. The same practices still blatantly exist in the procurement of these products. In short, despite years of effort and many initiatives on our part, for us nothing has changed.

On the other hand, Administration witnesses recently told you that, by and large, the new Procurement Code is working well and is being adequately implemented here and abroad; that many new government procurement opportunities are being opened up for the first time for U.S. exports. Among such glowing reassurances, however, there was no mention of the fact that our major products are not covered by the Code; and that "business as usual," or more accurately, no business for us, prevails as it has for many years.

I would like to clarify one important matter. Electric utilities in some European countries are government-owned. But in other countries in Europe, ownership of utilities is varied. Some are investor-owned, some are owned by regional government bodies, and some are owned by the national government. In Japan, electric utility companies are predominantly investor-owned. But the discrimination—the refusal by electric utilities throughout most of Europe and by those in Japan to purchase American-made electrical equipment is, with rare exception, universal, regardless of ownership. It is important to keep this in mind. While extending the coverage of the Government Procurement Code to purchasing of large electrical equipment by electric utility entities in Europe can be an important move toward ending trade discrimination for this equipment, other steps will be necessary to achieve broad trade reciprocity with all industrialized countries respecting these products. Exclusion of products from markets is unfair trade discrimination, regardless of the nature of the purchasers' ownership, and regardless of the artifice employed in maintaining such exclusion.

The second recommendation of the Administration is to urge that the Export-Import Bank provide export credit support for financing U.S. exports of products in sections such as ours which are denied access to foreign industrialized markets. This recommendation consists of a paragraph in its Sec. 302(d) Report to Congress. I am truly appreciative of the support Ambassador Brock has already given to our industry's export efforts. Frankly, I have never seen more positive efforts made by a Cabinet Member than the support he has already given U.S. manufacturing interests, and I am grateful for his willingness to continue advocacy of a larger budget and more responsive lending policies for Eximbank. I only hope he can prevail.

The third and final recommendation of the President again consists of a single paragraph in the Report to the Congress, but there is no discussion of pros or cons. It suggests that the U.S. Trade Representative "prepare" the analysis necessary to bring a Track II complaint under the GATT subsidies Code.

I urge the Committee to examine closely the more thorough and candid appraisal of this option in the earlier, Sec. 302(c) Report to the Congress. That analysis gave little basis for optimism.

Track II under the Subsidies Code is essentially a consultative, conciliation and GATT dispute settlement procedure wherein every country adhering to the Code has an equal vote and voice. It basically requires a judgement on whether the practice complained of is "inconsistent" with the Code. Since major countries have refused in the first instance to include under the Code entities which use our industry's type of products, the question will likely arise as to whether Track II is appropriate for expanding Code coverage.

The 10-year debacle in a GATT Committee over the legality of the DISC under the GATT is scarcely the experience we want to be subjected to as a remedy for our problem of discrimination.

To compound the futility of a Track II action in this area, the Code also requires appraisal of the consequences in terms of "serious prejudice" and "nullification or impairment" of a country's GATT rights—both nebulous, elusive, and highly contentious concepts of international trade law.

Finally, the Code has not been invoked against domestic subsidies and appears more nebulous with respect to them than to dealing with export subsidies. It requires "demonstrably adverse effects" on trade, but does not establish any criteria. With major GATT members having long benefitted from discriminatory procurement practices, in light of such a dubious and still untested GATT background of rights and obligations, it is highly unlikely that we can attain a majority against the self-interest of a number of countries, let alone have the latter publicly concede that what they have long practiced "adversely affects" others. I sincerely hope we don't have to rely on that sort of millenium. Track II at this stage of the Subsidy Code's development can be considered nothing less than a high risk, improbable solution.

Moreover, this is what the U.S. Trade Representative's staff said about Track II in its first Report to Congress:

"It would be difficult to demonstrate such an effect and therefore, the attempt to argue this dispute settlement case under the Subsidies Code would, in all likelihood, be unsuccessful. Furthermore, bringing such an indirect complaint could undermine the Subsidies Code dispute settlement mechanism."

Maintaining closed home markets for the benefit of home market manufacturers, thus providing them higher equipment prices at the expenses of their country's utility system and the country's consumers of electricity, is clearly subsidizing equipment manufacturers who profit from the practice and are thereby helped to export at lower prices. This is as much a subsidy as cash payments or tax rebates from governments which ordain or sanction such arrangements. I very much doubt that involved GATT members will agree that such practices violate the Subsidies Code, and I believe it is impractical to rely on the Track II approach as a solution to our problem of discrimination. I nonetheless want to encourage the Administration to undertake the Track II effort, but not to the exclusion of more practical actions for resolving our problem.

In short, Mr. Chairman, we see virtually no reasonable prospect for success in opening up long closed foreign markets to U.S.-made large electrical equipment under any of the actions proposed by the Administration.

We deeply appreciate the cooperation and interest demonstrated by Ambassadors Brock and McDonald and by Secretary Baldridge. We also welcome the Administration's espousal before this Committee of its "abiding reliance on market forces." We, too, would be happy if we could also rely on such desirable forces. We can and would compete effectively worldwide under such conditions. But they do not exist.

We must try to compete against companies who receive artificial protection and financial assistance from their own governments. I can only hope that our government will help to bring about the international existence of the market forces it would have us rely on.

There are many indications that growth in energy consumption, including growth in demand for electrical energy, is leveling off, especially in the industrialized countries. At the same time large electrical equipment manufacturing capacity worldwide is already greater than total world demand for these products. Competition for future sales can only intensify. With the major markets—those of the industrialized countries—closed to American manufacturers, the effects of such trade discrimination will become more critical in this capital-intensive, high fixed-cost industry. The impact of European and Japanese exclusionary procurement practices on American companies will be far more serious than it was in the past.

Energy consumption and electricity demand is growing rapidly in a number of the more advanced developing countries. They are purchasing nuclear plants, fossil-fired steam turbine generators and high voltage transmission equipment such as large power transformers and large power circuit breakers. Korea, Taiwan, Mexico, the Philippines, Egypt and other countries are expanding their electrical systems. There is aggressive competition from Europe and Japan to sell them power plants and other large equipment, with less-than-market-interest loans available to cover a high percentage of each transaction. Thus with indirect subsidies from high priced home market sales and low cost government export financing to support our foreign competitors, American electrical equipment manufacturers will remain at a significant disadvantage in trying to compete for the principal business open to it today and in the foreseeable future.

Notwithstanding allegations to the contrary, usually from those abroad who would justify the status quo of their closed markets, our record of competitiveness in those third countries where markets are relatively open, and when competitive financing was available from Eximbank for our products, cannot be disputed.

We recognize, too, the difficulties of obtaining all the facts in this area and in arriving at equitable solutions. Our industry undertook to prepare its own report under Sec. 302(c), and we found it anything but easy to get such information even from companies in our industry. Accounting data maintained for industrial and commercial purposes are often not readily adaptable for the production of specialized economic impact statistics.

We can also appreciate the frustrations of Congress after all these years of trade discrimination that solutions have still not been found. Our frustration is clearly far greater now that the economic circumstances of our industry critically require world market access if we are to remain viable in the manufacture of these products. Endless further international negotiations or the bringing of complaints under nebulous and yet untried provisions of the GATT give us little hope. Instead, they compel us to examine other alternatives.

I believe the only solution now lies in our own Govenment's effectively increasing our United States leverage to remove discrimination against our products in the industrial countries abroad. Such a course would not be without difficulties, but it is all that is left. The course proposed by the National Electrical Manufacturers Association (NEMA) to the Administration last summer, but which was not adopted in the Administration's Report to the Congress, was progressively to impose stronger countermeasures against competition in the United States from closed-market countries until such time as equivalent competitive access to them is established for American manufacturers. NEMA, in brief, proposed that the President establish a set of conditions and a timetable for gradually limiting access to the open U.S. market. These conditions would apply only to those countries not affording equal access for our large electrical equipment to their own markets. Such limitations would be terminated on a country-by-country basis whenever equivalency of opportunity is obtained.

After the long lack of any success toward obtaining equal opportunity in industrialized countries for heavy electrical equipment products, we know of no better answer. But to achieve it will require more than good intentions and sympathy.

An action our Government can readily take toward solving our problem is to insist that all countries whose markets are closed to American electrical equipment provide our government specific information on their utilities, equipment purchasing practices, including adequately detailed specifications of equipment purchased, and to be purchased, methods of selecting suppliers, identification of eligible suppliers, prices paid for specific equipment, with enough detail for making price comparisons, terms and conditions of payment, warranties, delivery and installation, and all other aspects of regular commerical transactions of this type. When purchasing of large equipment is carried out secretly, as happens in a number of countries, it is very difficult if not impossible for excluded industrial competitors to obtain information sufficient to initiate antidumping actions, countervailing duty actions or other unfair trade actions. It is even difficult to give Congressional Committees adequately information about such secret purchasing.

Other steps our Government could take against countries which exclude U.S. electrical equipment from their markets is to enact a requirement that any supplier of equipment from any such closed-market country be required to have a responsible officer of the overseas manufacturer submit a sworn affidavit for each equipment order from a United States purchaser that the price of the equipment is not a dumped price under the U.S. Antidumping Act; that the manufacturer (or manufacturers) of the equipment has (or have) received no subsidy with respect to the equipment which would be actionable under the U.S. Countervailing Duty Act; and that neither the manufacturer (or manufacturers) nor any of their agents have engaged in conduct, with respect to the equipment, which is violative of the U.S. Antitrust Laws.

We would be happy to assist in refining any of these ideas into adequate legislative form.

Chairman GIBBONS. Mr. Hurlbert, you made a very fine statement and a very interesting statement. Of course, as you know, I am acutely aware of the problem you have had in the turndown in the atomic area. I know where 1,000 of those 7,000 workers are, or at least where they were.

Mr. HURLBERT. Yes.

Chairman GIBBONS. I regret that has occurred and I am sure you regret it. I hope that we can take some kind of remedial action.

I agree with you, you know. Trade concessions ought to be reciprocal and market operations ought to be reciprocal. Where we find someone year after year either stonewalling or keeping us out, we ought to apply the principles of reciprocity straight back to them.

I don't believe we can do it any other way. I think your suggestion that we bring the conditions of these sales out in the open is a very important part. One of the things we want to do is to make it possible for American business to be able to take greater advantage of the rights we think we have under our statutes.

I realize how difficult it is for any private concern to prove dumping or a countervailing duty case. It puts a terrible duty on you. We are looking for ways that this can be reduced.

Your idea of using this on heavy equipment, making the supplier make a statement as to the conditions of the sale I think is a very constructive suggestion. We will see if we can't apply some of that to our basic law.

Mr. HURLBERT. I would urge the committee to urge the administration to give us help to find out what is really going on. We have no leverage over the customers who are government-owned utilities in the industrialized countries.

Our commercial attachés, I think, do have that, and if the State and Commerce Departments were really to actively work on it, I think they could get that information. If the information were public I think we would have a much better chance at getting a shot at the business. TVA opens its bids publicly. They put out specifications. We bid on it. The whole world knows what everybody bid, U.S. and other manufacturers.

If we just had that in the rest of the industrialized countries and it became open knowledge, I think we could do much better, get a lot more business and I think we could employ a lot more people in this country.

Chairman GIBBONS. You in effect said that everyone in Europe, except Sweden, and I guess we wouldn't include Japan as being in Europe but as being an industrialized society, just does not offer us reciprocity.

Mr. HURLBERT. That is right, if they have the industrial capability. Now, Spain does not have full capability, so we have an opportunity to sell there. We have an opportunity to sell in Greece. But in the industrialized countries, that is not the case—Italy, France, and Great Britain.

The last time Great Britain bought a turbine that was not manufactured in England was in 1936 when Neville Chamberlain came back from Munich and agreed to buy a German turbine. That is the last time England bought a non-British manufactured turbine.

Chairman GIBBONS. Do we really have access to the Japanese market?

Mr. HURLBERT. We have access the first time around—they will let us sell one turbine, the newest one, if we will give them the drawings and prints so they can manufacture all succeeding ones. They will let us sell the first new design, but that is it. In that particular case it is really the Government that prevents us from selling. We have to have a license from MITI, the Ministry for International Trade. And we are just never able to get that license for the second, third, or fourth one.

Most of the utilities there are investor owned as differentiated from Europe where most are publicly owned.

Chairman GIBBONS. The Korean case you mentioned, who got that business?

Mr. HURLBERT. The French got the nuclear steam supply system. They didn't even put that out for bid, and that was a couple hundred million dollars, because the French offered them competitive, very low-cost financing. They put the nuclear steam supply, I mean the turbines, out for bid. We were low bidder, evaluated low. The Koreans finally gave it to the French.

In Seoul, Korea, we just recently lost the motors and controls for the multi-hundred-million dollar Seoul, Korea, subway. That went to the British under subsidized financing.

It is not certain it would have gone to an American firm anyway. But we were foreclosing from being seriously considered on the subway with the subsidized British financing.

We are in big trouble in Taiwan with the Japanese heavily subsidized financing on a very large powerplant order that is up now.

We are in trouble in Mexico with heavily subsidized German and French financing. We have lost large amounts of business in Southeast Asia on mixed credits. In other words, the French and Germans are mixing what I would call foreign aid money, and their regular financing, with the result that we have a mixed financing at very low interest rates because, obviously, they are giving some of it away.

So we have lost all that business in the last 18 months. We have not elected to mix aid money and other financing in the United States, and that is a very serious problem. It has never been addressed in negotiations among the countries, and is going to be very serious in the next few years.

The result will be we are going to have to close our American manufacturing facilities and build manufacturing facilities in the countries where we can get this financing. That is a tragedy for America from my point of view.

Chairman GIBBONS. Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman. Mr. Hurlbert, which of your competitors did you say were mixing aid and credits?

Mr. HURLBERT. The French and Germans.

Mr. JONES. Do you find much of this among the Japanese?

Mr. HURLBERT. Well, in the jobs that I have recently lost, I lost them to the Japanese on financing, but it was—that their regular Export-Import Bank financing, not on mixed credits.

Mr. JONES. Among your industrial competitors, is there any country with which you compete on an equal footing as far as financing is concerned?

Mr. HURLBERT. In the last 9 months, we have—last year, we in the United States have been totally noncompetitive on financing. We have no problem, we have no trouble competing, we will get our share or more of the market if we can get competitive financing.

I am not worried, we hear about high labor rates and loss of productivity. I am not worried about that. We can compete if we just get a fair shake. On our high-technology products.

Mr. JONES. As far as unfairness is concerned, the French, Germans, British, and Japanese are the major nations subsidizing financing to your disadvantage, is that correct?

Mr. HURLBERT. Yes; that's correct. My associate here wants to make a comment.

Mr. HOBBS. I think it should be pointed out the Japanese financing is probably not overtly subsidized.

They control the whole borrowing situation in Japan including foreign lending, to where their total interest rate structure is held down. But it is not something that can be easily identified. I think we should keep that clearly in mind.

Mr. HURLBERT. In general, that is clear, but we are in very serious negotiations right now, and they are heavily subsidizing it below their 9.5 percent long-term rate in an effort to close the order, and they are saying it is grandfathered under the OECD arrangement before they agreed to go to the new minimums.

Mr. JONES. In the final stages of the MTN, when it was before our subcommittee, this question of the heavy electrical equipment market in Western Europe was one that we dealt with at the last minute, one that concerned me.

Could you give us a relatively conservative estimate of the trade potential for U.S. heavy electrical manufacturers in Western Europe, if you were given equal access to those markets?

Mr. HURLBERT. Well, there is about a $6 billion market. Now, it is difficult to know how much of that we could earn on a competitive basis, certainly it would not be anywhere near all of it.

We would have a shot, I think, on a fair basis of getting between a quarter and a third of it.

Mr. JONES. What is the U.S. share now of that $6 billion?

Mr. HURLBERT. Essentially zero.

Mr. JONES. You referred two or three times in your testimony to the fact that the U.S. Government has no leverage. You do make some recommendations, most of which are the NEMA recommendations.

My question is, when you ask the U.S. Government to insist that the Europeans display some openness, at least in determining the qualifications of the contract, et cetera, what's been the response of our Government and why has the United States not pursued this more aggressively?

Mr. HURLBERT. In general, their response has been that one must look at the total trade package. They are going to do as well as they can. Some sectors are going to be hurt. The other governments have steadfastly refused to grant this, and our people have done the best that they could under the total negotiation posture the other people had, and that we will have to be hurt in the interests of the United States and all the other product lines.

Mr. JONES. In other words, they really haven't done anything?

Mr. HURLBERT. Nothing.

Mr. JONES. Of course, the European nations were put on notice that this was one of the things we expected.

Mr. HURLBERT. Frankly, they don't believe us. And I know most of those people over there. They don't believe our Government has the will to do anything.

Mr. JONES. What would you suggest Congress do?

Mr. HURLBERT. Well, there are a number of things that I would like to see Congress do. The most important one would be to set up timeframes that, without reciprocity, we will take action.

Let me tell you some of the things that would bring them to the negotiating table. The President has a unilateral right, as you know, to change the buy-America differential. If we were to increase the buy-America differential only against those countries that didn't let us in, this would bring them to the negotiating table.

Second, we could say that no government body in the United States could use Government funding for purchase from manufacturers in countries that don't allow us in. That would be TVA, Bonneville, the REA's and other Government agencies.

That would be a powerful incentive to bring them to the bargaining table. Ultimately, you could say we would not let them in unless they let us in.

I think, though, long before that, if they thought we were serious about demanding reciprocity, I think that we would get it.

Mr. JONES. I think there is a growing seriousness in Congress about reciprocity. I am not sure how to encourage that seriousness in the administration, but I thank you for your testimony.

Mr. HURLBERT. Thank you, Congressman.

Chairman GIBBONS. You were bidding on a project in South America involving Argentina.

Mr. HURLBERT. Yes.

Chairman GIBBONS. Can you tell us about that?

Mr. HURLBERT. There were two jobs. I will give you both of them. On the large hydro project between Paraguay and Argentina, we quoted generators and Allis-Chalmers Co. quoted the hydro turbines.

The hydro turbines were awarded to Allis-Chalmers Co. We lost the generators. I am talking about water turbines, not steam turbines.

In that particular case, I frankly don't believe we were competitive. We didn't have as good an offer as some of our foreign competitors. That is not the case on the Buenos Aires subway. There is a massive subway that is going to be built in Buenos Aires. In that particular case, the U.S. manufacturers, I think, are the low bidders. In that particular case, if we lose that, I think it will be strictly because we cannot provide competitive financing from the Eximbank. That is a very, very large order.

We are working as hard as we can to keep on selling it along with other companies in the U.S. consortium. We are working as hard as we can with Mr. Draper at the Eximbank to come close to giving us competitive financing on that.

If we lose that, I think it will be on financing. I don't think honestly I lost the water wheel generators on financing, I think I lost them because I didn't have the best technically evaluated proposal, very honestly.

That is not the case of the turbines in Korea. I clearly would have gotten those.

Chairman GIBBONS. Those little cars you built and installed at Tampa International Airport certainly have been very effective and reliable. I ride them about twice a week.

Mr. HURLBERT. Thank you.

Chairman GIBBONS. I tell you, I have been amazed that they can shuttle as constantly as they do.

Mr. HURLBERT. We have had a high level of reliability on those people-movers and we are proud of that. And we get a significant share of that business around the world.

Chairman GIBBONS. You have made some good suggestions. We will try to follow through.

Mr. HURLBERT. Thank you very much, Mr. Chairman.

Chairman GIBBONS. Our next witness is Mr. C. Fred Bergsten, director of the Institute for International Economics. I looked all around the room for you, couldn't find you, but I am glad you stirred and I put my eye on you there.

STATEMENT OF C. FRED BERGSTEN, DIRECTOR, INSTITUTE FOR INTERNATIONAL ECONOMICS

Mr. BERGSTEN. Thank you, Mr. Chairman.

Chairman GIBBONS. All right, Mr. Bergsten, you may proceed in any manner you wish.

Mr. BERGSTEN. Thank you very much, Mr. Chairman. I would like to make four basic points in my testimony this morning. I will summarize them at the outset, and I have a prepared statement for the record that I would then go through briefly .

The first point is to indicate a fact which I think is not widely realized, that the decline in the U.S. trade balance is the single most important factor in our domestic recession over the last 6 months.

Most people, in thinking about the recession so far, tend to blame the housing slump or decline of automobile sales, both of which, of course, are quite important. But I think it is not recognized that a bigger factor by far is the deterioration in our external trade balance, which has caused a very sharp decline in its contribution to the GNP. In fact, had it not occurred, we would not be talking about a recession for the last 6 months because the domestic economy on balance would have still shown modest, though positive, growth.

The second point is to note that this very sharp decline in the U.S. trade balance is not due to any underlying structural uncompetitiveness of the U.S. economy. If one wants recent evidence on that, one need only look at the period between 1978–80 when U.S. exports rose at twice the rate of world trade, a period during which our shares in every major industrial sector were rising very sharply around the world to a point where early this year the U.S. share of world export markets was greater than it was 10 years ago.

So there need be no concern, I think, about an underlying inability of the U.S. to compete internationally. Indeed, over the last 3 years we have done very, very well.

The third point, then, is to explain how it is that we have had the big deterioration recently. And I think the answer is very simple.

It is due to the extreme overvaluation of the dollar which developed in the exchange markets during the earlier part of this year.

At its peak this past summer, I would estimate the dollar overvaluation probably reached 15 to 20 percent on average. Against certain currencies, like the German mark and Japanese yen, it was much greater.

I elaborate in my statement that, from the dollar lows of October 1978 to the highs of this past August, the dollar rose in value by 50 percent against the German mark and 40 percent against the Japanese yen.

During that period, however, U.S. inflation was running much more rapidly than inflation in those countries. So we were losing price competitiveness both because our inflation was faster and because the value of our currency rose very sharply against theirs.

The net result has been a very substantial deterioration in the international price competitiveness of the U.S. economy both in the export markets and in terms of import competition coming into our domestic market, for example, in steel.

So what's happened recently is that the trade balance has declined very substantially, the major single factor contributing to the recession, so far, and that it has been due to the overvalued dollar in the exchange market.

I am afraid we have only begun to see that deterioration. I think it will get worse in 1982 and into 1983, and will be a continued adverse drag on our domestic economy for some time to come.

The fourth and final summary point is to say that this overvalued dollar clearly is already producing and will continue to produce major pressures on the Congress and on the executive branch for import relief measures.

In my statement, I trace the postwar history of U.S. trade policy. My reading of that history suggests that the exchange rate of the dollar is by far the best "leading indicator" of the extent of protectionist pressure that one is going to feel from affected industries.

In fact, that is a quite understandable response. Many industries do not, in fact, even recognize the impact on them of the exchange rate relationships. They can see subsidies and dumping margins and the kinds of financial competition the gentlemen from Westinghouse were talking about, and those are all important factors.

But they often themselves do not even perceive the great impact of exchange rates, even of the magnitude we have had recently.

You take an industry like steel, which I know you will be hearing from later on this morning. In a bulk product like that, price changes of 10 to 15 percent can be decisive at the margin in determining who gets the business.

When you have exchange rate changes on the order of 25, 40, 50 percent, then you change the locus of competitive ability enormously, and so it is not surprising, on my model, that you would see a huge increase in the import penetration ratio in the steel industry, given the enormous competitive advantage that has accrued to German and other European steel makers, particularly, from these huge changes in price relationships over just the last couple of years.

The point is, that as one gets these big exchange rate changes, one is going to have enormous pressure to restrain on the import side.

I think it would be a mistake to restrain on the import side. Obviously, the policy implication of all this is that one needs to get the exchange rate relationships right in the first place. In some sense, that is water over the dam because the trade effects of exchange rate changes lag the exchange rate changes themselves by 1 or even 2 years.

So in some sense, the die is cast for the next year or two from the very substantial dollar overvaluation which we have had and which continues today, albeit at a slightly lower level than existed at the dollar highs last summer.

That means that you are going to get continued pressures of this type. But in my judgment, it would be a mistake to respond to them through trade relief measures.

Now I do, toward the end of my statement, suggest a number of factors that I think will, on balance, determine the trade policy framework.

Obviously our continuing concerns over inflation argue against putting on import restraints because they would add to inflation. The increased U.S. dependence on export markets is a factor counseling us to maintain an open trading policy.

Over 20 percent of U.S. industrial output is now exported. The output of two out of every five acres of our farmland is exported. Exports create one out of every six or seven jobs in the manufacturing sector.

So we have an enormous stake in exports and interdependence of the world economy and should be loathe to restrict on the import side.

I think another barrier against protectionist pressures is the GATT system itself, which, for all its shortcomings, has held up well over the decade of the 1970's against an unprecedented set of external shocks. Indeed, it even produced the further trade liberalization of the Tokyo round.

And I think the administration quite clearly opposes import restrictions. They would be inconsistent with its free-market philosophy and basic approach to both economic and foreign policy, so I think we can count on them to take a strong line in that direction.

Chairman GIBBONS. What are the causes of our overvalued dollar?

Mr. BERGSTEN. I think there are several, Mr. Chairman. Some very shortrun factors are involved like political stability around the world, troubles over Poland, election of a Socialist government in France. Various political factors remind people of the safe-haven virtues of the dollar and push money into the dollar in response to those conditions.

The fact that our export performance was so strong, and that we moved into current account surplus in 1979 and 1980, also were strong factors in support of the dollar exchange rate.

I think the election of President Reagan, rightly or wrongly, generated confidence around the world that there would be a stronger U.S. economic policy, stronger U.S. foreign policy, somewhat, I might say, the same way that the election of Mrs. Thatcher led to the same result in Britain for a time and also created a highly overvalued exchange rate for the pound, which has already collapsed.

But I think the singlemost important factor in the big runup in the dollar exchange rate this year, which led it to such a degree of overvaluation, was the very sharp runup in U.S. interest rates, which in turn reflected the loose fiscal policy being carried out in this country. That, in turn, put all the pressure of fighting inflation on monetary policy, producing very high interest rates and attracting huge flows of liquid capital into the dollar.

The interest rate differential between the United States and Germany, for example, rose from virtually zero in March to about 4.5 percentage points in July and August. This correlated almost precisely with the runup of the dollar against the deutsche mark and other European currencies. So I think that was the most important single factor.

As U.S. interest rates have come down over the last couple of months, both in absolute terms and in relation to interest rates of other countries, the dollar has come down somewhat in the exchange markets. It is off about 15 percent against the mark, off about 6 percent in trade-weighted average terms in other countries. That means it's retraced about one-fourth of the runup that occurred from late 1979 through the summer of this year, thereby retracing some of the overvaluation but, I would submit, by no means all of it.

That is why I said at the outset that I think the adverse trade impact of this dollar overvaluation is going to continue, not only through 1982 but well into 1983, because the overvaluation continues, albeit a bit lower than a few months ago, and the lags between pricing changes, whether from exchange rates or anything else, and actual trade deliveries, runs between 1 and 2 years at least before you get the full impact.

Mr. Chairman, I will conclude rather quickly.

Chairman **Gibbons**. Yes; go ahead.

Mr. **Bergsten**. I cited a few reasons why I thought there were some strong defenses in the current environment against resorting to widespread import relief. At the same time, I would have to submit that very worrisome signs abound in this area. You know them better than anyone else.

We do have, I think, an outlook for slow economic growth and relatively high rates of unemployment. We do face continued competitive pressures from Japan and many of the advanced developing countries that will continue to penetrate competitively in many sectors.

The continued surpluses of the oil-exporting countries will force a large current account deficit on the rest of the world, and provide incentives for the rest of the world to try to export its deficits to each other and avoid problems themselves.

Very importantly, I think the gutting of the trade adjustment assistance program, whatever its shortcomings in practice, has removed a very important source of defense against import relief measures and is something I hope this subcommittee and the Congress as a whole, will turn its attention to in trying to restructure such a program in the near future.

I would also cite a new type of trade policy problem emerging around the world. That is the onset of investment-related trade distortions—incentives and performance requirements that are being promulgated in many countries to try to tilt the advantages of international investment flows to their benefit, which may in many cases have adverse effects on our own economy and add to the distortions and pressures here to retaliate in kind or at least emulate what is going on abroad.

I would conclude, as I said before, that the major threat to an open trading policy at present is the continued overvaluation of the dollar and the after effects of the even more serious situation of a few months ago.

Now, given that overvaluation of the dollar, we should not be surprised that many U.S. firms are now reporting declines of 40 to 50 percent in their export orders.

Import penetration is up sharply in several industries, such as steel. In many cases, even the absolute level of imports is up despite the softness of the domestic economy.

Japan and Germany, which were running double-digit current account deficits as recently as last year, are now back to at least balance in the German case and strong surplus in the Japanese case.

Our bilateral trade deficit with Japan will hit a record $18 billion this year, and probably soar to at least $25 billion next year. I hasten to say that I reject the notion that bilateral balances should be accorded much significance, but I certainly recognize the political impact of that particular imbalance and would add that the bilateral position does mirror a swing in the overall positions of Japan into heavy surplus, and the United States into deficit, both reflecting primarily the changes in exchange rates that have gone on in the recent past.

But the most startling effect of all this, as I noted at the outset, is that the deterioration in our net export position has been the greatest single factor pushing the U.S. economy into recession during the second and third quarters of 1981.

Now, what to do about it. There are a number of implications for trade policy which I would suggest. One is clearly that those of you who worry about trade policy need to resist misguided efforts to respond to the situation by import relief measures but need to put the heat on people responsible for international monetary policy, to try to get exchange relationships into balance and, in the future, avoid policy measures here that get them so badly out of equilibrium.

I would say, parenthetically, that I am concerned, in addition to the underlying policies that have affected the exchange rate situation, about the functioning of the exchange rate system itself.

As you know, Mr. Chairman, I have always been a strong supporter of a system of more flexible exchange rates. I do believe, however, that the degree of fluctuation which is now occurring within that system has become quite worrisome in terms of underlying economic effects.

The exchange rate system has translated the underlying policy differences into an increasing degree of fluctuations and has at least permitted, some would even say promoted, movements away from underlying equilibrium. An overvalued dollar, and an undervalued yen are the most recent experiences.

I think we do have to begin, once again, considering ways to improve the function of the international monetary system, in addition to improving our own policies here at home and within other countries, in an effort to avoid the repetition of these cycles of extreme fluctuations of exchange rates which do cause major imbalances and have very adverse effects on jobs, economic growth and, on the other side of the equation, on ability to fight inflation.

I would conclude by mentioning several additional steps on the trade side itself that commend themselves to me.

One would be to start working on the construction of a new program of trade adjustment assistance. I know you have been through this a lot. I know the record is not a very hopeful one.

But it does seem to me that a program of that type is an essential part of any constructive U.S. trade policy. And we should all begin thinking about it much harder again.

Second, we need to maintain or even expand the export promotion efforts that have been started up in the last few years, such as the efforts of the Eximbank the gentlemen from Westinghouse were referring to. I agree with them fully. Passage of the export trading company legislation and other steps to reconfirm our focus on expanding exports, and try to deal with our trade problems that way, along with the monetary steps, is much better than resorting to import relief. I think it is very important for the Congress to begin working meaningfully with the administration to deal with these problems of investment-related trade distortions which, if not dealt with constructively, could themselves trigger a new host of protectionist policies, both within our country and elsewhere.

I do think we need to begin thinking about a new international trade negotiation to deal with the problems of the 1980's, like the Kennedy round dealt with the problems of the 1960's and the Tokyo round dealt with the problems of the 1970's. I say that for two reasons. One is because there are a number of new types of international trade problems: Problems in the services industries, problems particularly related to investment, continuing problems related to agriculture, problems stemming from the implementation of the codes negotiated in the Tokyo round.

There is a full agenda. I believe that probably the only way to deal effectively with them is by going into another major international trade negotiation.

There is another reason for doing that, which I referred to early in my statement. History also shows us that it is most difficult to resist pressures for import restrictions from individual industries when we are not moving forward with an effort to liberalize trade for the benefit of the economy as a whole.

If one believes, as I do, that we want to maintain an open international trading system, and continue to pursue that path, we have to not only carry out a tough trade policy ourselves in defending our interests and avoiding unfair trade practices by other countries, but we need to be negotiating toward an ever more open trading system through the international negotiating route.

By so doing, I think we provide a much better framework for resisting pressures for import relief from individual industries, which is much more difficult to do without that broader context.

Now, all of these steps that I have mentioned clearly are not something that can be done overnight. They will take quite a long time to put together. My point, however, is that the United States now, I think, has no real trade policy strategy. We have objectives. The administration has stated very clearly its objective of maintaining and pursuing an open international trading system.

But I think we have no real strategy with various component parts that would effectively pursue those objectives. Since, as I have indicated, I think the pressures to reverse the policies of the past are quite substantial and quite dangerous, I would urge the subcommittee to do everything it can to move in that direction.

Thank you.

[The prepared statement follows:]

STATEMENT OF C. FRED BERGSTEN, DIRECTOR, INSTITUTE FOR INTERNATIONAL ECONOMICS

THE TRADE BALANCE AND THE RECESSION

The Gross National Product of the United States has declined over the past two quarters. Most observers believe we are therefore in a recession. Most attribute this situation primarily to declines in the housing and automobile industries. They would be wrong to do so.

The biggest single factor in the first 6 months of the recession was the precipitate fall in the U.S. trade balance. "Net exports," as included in the GNP, declined at an annual rate of over $11 billion between the first and third quarters. By contrast, housing fell at a rate of $7.7 million and consumer durables, including autos, at a rate of $5.6 billion. Indeed, had the trade balance remained unchanged over this period, the GNP would have recorded modest positive growth ($7.5 billion, an annual rate) and there would have been no talk of "recession" for that period.

Changes in the trade balance are thus having an acute impact on the whole U.S. economy, including its ability to generate jobs and profits to fuel new investment. (In fact, from 1978 to 1980, increases in "net exports" accounted for 60 percent of the total growth in our GNP.) In my view, the recent adverse change stems almost wholly from international monetary developments—the huge overvaluation of the dollar in the exchange market, which has severely undermined the competition position of the United States in international trade. Before elaborating on that conclusion, however, I would like to briefly trace the historical relationship between international monetary factors and U.S. trade policy.

EXCHANGE RATES AND TRADE POLICY

The postwar history of U.S. trade policy strongly suggests that there is one economic variable which, far better than any other, is a "leading indicator" of the degree of pressure for import relief which will be brought to bear on the Executive branch and the Congress. That variable is not the unemployment rate, but rather the exchange rate of the dollar: when it becomes significantly overvalued, widespread pressure for import relief cannot be far behind.

Conceptually, the reasons behind this relationships are clear. The classical case for free trade includes "balance of payments equilibrium"—which basically equates to exchange rate equilibrium under a system of floating currencies—among the assumptions whose existence is necessary for the case to hold. More pragmatically, an overvalued dollar means that both U.S. exporting and import-competing industries are placed at a pricing disadvantage relative to their foreign competitors; as a result, imports will rise and export expansion will slacken—slackening along with it one of the major countervailing forces against import relief.

Of great political significance is the fact that this competitive deterioration occurs across the board for all U.S. industries, not just one or two with particular vulnerability to foreign competitors. To be sure, those industries closest to the competitive margin will be hardest hit by dollar overvaluation. But even the most competitive U.S. industries suffer in such a situation, and a wide-ranging political coalition of both firms and workers can thus be formed to support a retreat from the traditional U.S. adherence to an open international trading system.

The empirical record bears out this thesis, and simultaneously rejects the alternative hypothesis that the aggregate unemployment rate is a more useful "leading indicator" for trade policy:

The first major U.S. trade-liberalizing initiative of the postwar period was the Kennedy Round of trade negotiations. The Trade Expansion Act, which launched that effort, was debated in 1961 and passed the Congress in 1962. At that time, the unemployment rate had soared well above 6 percent, with one exception (1958) the highest to date in the postwar period. The United States had begun to experience its first international financial problems of the postwar period, but there was still widespread perception of a "dollar shortage" and no one, even in retrospect, argues that the dollar was overvalued at that time.

The most extensive pressures for aggregate import relief in the postwar period arose in the late 1960's and early 1970's culminating in House passage of the "Mills bill" in 1970 and serious Congressional consideration of the Burke-Hartke bill in 1971-72. At the onset of these pressures, however, aggregate unemployment was at its lowest level (3.5 percent) since the Korean War and, even at the peak of the 1971 recession, was lower than in the early 1960's when Congress passed the Trade Expansion Act. The problem stemmed from the huge overvaluation of the dollar which developed during the final years of the Bretton Woods system of fixed exchange rates, as indicated by the devaluations totaling about 15 percent which occurred in 1971 and 1973. In short, the AFL-CIO had a strong point in pushing Burke-Hartke—not a point concerning failure by U.S. trade negotiators or perfidious "exporting of jobs" by U.S. multinational firms (whose foreign investments were also significantly related to dollar overvaluation), but a failure of U.S. international monetary policy and the contemporary international monetary system to maintain an equilibrium rate of exchange for the dollar.

In December 1974, Congress passed the Trade Act which authorized U.S. participation in the Tokyo Round of trade liberalization. At that precise time, the unemployment rate had reached a postwar peak of 9 percent. But the dollar was in equilibrium, after the devaluations of 1971 and 1973, and the U.S. current account had returned to balance without benefit of recession or any other artificial help.

In 1976-77, more modest (but still substantial) protectionist pressures arose again. When the Carter Administration took office, it faced a number of major escape clause cases (shoes, color televisions, sugar) and other trade relief actions. To some extent, these pressures probably did stem in part from the high unemployment levels which accompanied the recession of 1975—although unemployment had declined steadily since late 1974. Again, however, the chief villain was an overvaluation of the dollar, amounting to perhaps 10 percent, which derived from the recession-induced current account surpluses of 1975–76.

The record is thus reasonably clear: dollar overvaluation portends substantial pressure for import relief, and does so far more than any other macroeconomic variable. High levels of unemployment are not a causal factor of anything like the same magnitude, though they can further intensify those pressures. Pressures for relief in individual sectors often proceed independently of either of these factors, of course; recent analysis by my colleague, William R. Cline, indicates that sector relief derives importantly from (a) the level of total employment in an industry and (b) its import penetration ratio. At the aggregate level, however, the exchange rate is clearly the key.

Before applying this analysis to the current situation, one further point needs to be made. There is one additional variable, this time of a policy nature, which contributes to explaining the degree of pressure for import relief: the existence of a major international trade negotiation. When such a negotiation is in progress, both Administration and Congress tend to reject import relief petitions as disruptive to the broader, liberalizing effort—and such petitions are thereby discouraged. In the absence of negotiations, however, there is much less general-interest resistance to particular-interest efforts. Hence it comes as no surprise that a series of import relief pressures have been mounted shortly after the conclusion of the Kennedy Round (steel, meat, non-cotton textiles), after the apparent failure of the Tokyo Round to get off the ground (shoes, specialty steel) and after the conclusion of the Tokyo Round itself (most notably autos). Any comprehensive effort to maintain an open trade policy for the United States therefore probably requires, as an integral component, rather steady participation in major international trade-liberalizing negotiations.

THE CURRENT SITUATION

In my view there are several defenses against an outbreak of protectionist pressures in the present environment:

Continuing concerns over inflation, which is exacerbated by import restraints.

The increased U.S. dependence on export markets, which would suffer from increases in U.S. import barriers; exports now take over 20 percent of our industrial output and 40 percent of our farm output, and create one of every six or seven jobs in the manufacturing sector.

The GATT system, which held up remarkably well in the face of severe external shocks throughout the 1970's and even produced the liberalization of the Tokyo Round.

The opposition of the Reagan Administration, whose devotion to free market principles clearly makes it reluctant to accept any new restraints on trade.

At the same time, worrisome signs abound. Slower economic growth and higher rates of unemployment are with us for some time to come. Competitive pressures from Japan and the advanced developing countries will continue to rise in many sectors. Continued OPEC surpluses will force a substantial deficit on the rest of the world, triggering aggressive efforts by most countries to shift their share of that deficit to others. The gutting of the Trade Adjustment Assistance program, whatever its shortcomings in practice, removes an important source of political defense against enacting import relief measures. The onset of investment-related trade distortions, in the form of incentives and performance requirements, adds a new source of protectionist pressure to the overall equation.[1]

The major threat to an open trading policy at present, however, is the continued overvaluation of the dollar in the exchange markets and the after-effects of the even more substantial overvaluation which existed a few months ago. From the dollar lows of October 1978 to the highs of August 1981, the dollar rose by a trade-weighted average of about 25 percent against the other major currencies. It appreciated by 50 percent against the German mark and a few others, and by 40 percent against the yen. All this happened during a period when U.S. inflation fared no better than inflation in the other key countries, on average, and by 15–20 percentage points worse than in Germany and Japan.[2]

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[1] See C. Fred Bergsten, Statement before the Subcommittee on International Economic Policy of the Committee on Foreign Relations, U.S. Senate, July 30, 1981.

[2] For elaboration see C. Fred Bergsten, "The Costs of Reaganomics," Foreign Policy 44 (Fall 1981).

From the trade policy perspective, the key point is that the international price competitiveness of the United States deteriorated by 50 percent or more against other key countries, and by about 25 percent on average, in less than 3 years. We should therefore not be surprised that:

Numerous U.S. firms are reporting declines of 40–50 percent in their export orders.

Import penetration is up sharply in several industries, such as steel.

Japan and Germany, which were running double-digit current account deficits as recently as 1980, are now back into surplus.

The U.S. bilateral trade deficit with Japan will hit a record $15–18 billion this year, and could easily soar to $25 billion or more in 1982; I reject the notion that bilateral balances should be accorded any significance, but recognize that this particular balance has important political overtones (and reflects a sharp increase in the global imbalances of the two countries).

Most startling, as noted at the outset, the deterioration in "net exports" was the greatest single factor pushing the U.S. economy into recession during the second and third quarters of 1981; had the trade balance remained unchanged, there would have been no recession at all during this period.

Unfortunately, I fear that these are only the initial effects on U.S. trade of the huge dollar overvaluation—which, at its peak, was probably greater than the overvaluation that occurred at the end of the Bretton Woods system of fixed exchange rates (which, as noted above, spawned the Burke-Hartke bill and other protectionist efforts a decade ago). Both the trade and current account deficits will undoubtedly soar to record levels by late 1982 or early 1983; the domestic recession will keep the numbers somewhat smaller in early 1982 than appeared likely a few months ago, but this has only postponed the inevitable, Moreover, we are likely to confront the unusual pattern of simultaneous deterioration in the domestic economy and the external balance; the external balance usually improves during such a period because the fall in domestic demand produces a sizable decline in imports, but the adverse price effects from dollar over-valuation seem likely to continue to dominate that effect.

At some point, probably within the next six months, the dollar will tumble in the exchange markets in response to these deficits and return to an equilibrium level; it has already fallen by about 6 percent from the August peak. However, changes in actual trade flows lag changes in exchange rates (and other price relationships) by up to 2 years. Hence the die is cast for some time to come, and we are clearly in for a very bad time in this area over the period ahead.

THE IMPLICATIONS FOR TRADE POLICY

One implication, as suggested by the historical rendition above, is that we can expect major pressures for import relief. The steel industry is the first major case in point; the recent surge in imports appears almost wholly due to the change in relative prices outlined above, in an industry where price changes of even 10–15 percent can change losers into winners and vice versa, rather than to any important changes in foreign government subsidies or dumping practices. Specialty steel has applied for new relief. The U.S. textile (as opposed to apparel) industry, which has been running trade surpluses on the order of $1 billion annually for the past two years and thus seemingly could give up at least some of its protection, is slipping again and insisting on tighter protection under the aegis of the (presumably extended) Multi-Fiber Agreement. It is not hard to imagine that numerous others will soon join the parade.

These pressures are fully understandable in light of the adverse effects of dollar overvaluation on the industries involved, but it would be a major mistake to respond to them by enacting new trade barriers. The answer to the problem, of course, is to resist overvaluation of the dollar with the same zeal with which we should resist its undervaluation (due to the adverse consequences for inflation). Among other things, this requires carrying out a balanced mix between fiscal and monetary policy domestically so that excessively high interest rates will not push the dollar far above its competitive equilibrium, in trade terms, by attracting huge flows of liquid capital—as was the case through most ot 1981. It requires intervening in the exchange markets, particularly in concert with the other key countries, at least to brake the degree of overvaluation directly. It may mean new efforts to improve the functioning of the system of flexible exchange rates, to limit the overshooting which has seemingly become endemic—and may even be growing, thereby raising the specter of dynamic instability in the whole process.

These remedies go beyone trade policy per se, but I believe that trade policy must make a major contribution to resolving the current state of affairs—including resisting misguided (if understandable) pressures to protect, and pushing the officials responsible for international monetary policy to take commensurate steps both to rectify the current disequilibrium and to avoid such situations in the future. Several additional steps commend themselves as well:

Construction of a new program of Trade Adjustment Assistance, which will provide real adjustment (but also politically necessary "side payments") in more cost-effective ways.

Maintenance, or even expansion, of export promotion efforts such as Eximbank and the pending Export Trading Companies, as a far preferable alternative to import relief.

Working with the Administration to begin a major response to the problem of investment-related trade distortions, which may otherwise trigger a whole new series of protectionist measures (e.g., local content requirements for automobiles sold in the United States).

Serious contemplation of a major international negotiation to deal with the new trade problems of the 1980's (such as services and investment-related issues) and to seize the momentum against protectionist pressures, like the Kennedy Round in the 1960's and the Tokyo Round in the 1970's.

All of these steps, both on the monetary and more strictly trade sides, will obviously take time to develop and even begin to implement. At the moment, however, the United States seems to have no trade policy strategy. In the face of the pressures to reverse the approach of the last forty years, cited above, this is an exceedingly dangerous situation.

I therefore urge this Subcommittee to begin now to push for the development of a coherent strategy to advance U.S. trade interests and maintain the system which has worked so well. Even the commencement of such an effort will help deal with ongoing issues as they arise, and provide an impetus in the proper direction. I hope that my testimony will contribute to this end.

Chairman GIBBONS. That is a very fine statement. As you talked about leading indicators for trade matters, I remember back to our experience in the late 1960's, early 1970's, when we finally came off the fixed-parity world system of monetary policy. I remember at that time we had great expectations that trade balances would suddenly whip around. And they didn't. But they finally did.

And as you said, they moved very dramatically in the mid-1970's, and were peaking out here just a year or so ago. Then our current balances had gone actually into surplus, and our share of world trade was actually growing relative to other people's share of world trade.

Then suddenly we shot ourselves in the foot again, some of it unavoidably, but some of it self-inflicted, as if we didn't even know how to use the gun, by allowing our trade-weighted dollar to just become horribly over-balanced, horribly.

And it has destroyed our ability to export and has made imports extremely attractive in our market. At the same time, we seem to go on and fight the peripheral pimples, rather than the source of the infection itself. An excellent statement, Mr. Bergsten. Good suggestions.

We have clearly stated objectives, but we have no strategy for getting there. I think our lack of strategy for getting there is the cause of our trouble right now.

I would have to agree with you, that the road is going to be tougher in the immediate future because it's been my experience, as I stated earlier, that once these forces take hold, they have an awful lot of momentum and it takes an awful long time to change them.

Mr. BERGSTEN. Mr. Chairman, you mentioned the period of the late 1960's and early 1970's when the exchange rate system was changing. I think that recalls another episode I referred to in my statement but didn't mention orally.

You will recall that was also the period when the pressures for import relief were probably the greatest of any in the post-war period.

Chairman GIBBONS. That's right.

Mr. BERGSTEN. You remember the Mills bill passed the House here in 1970.

Chairman GIBBONS. Burke-Hartke.

Mr. BERGSTEN. Burke-Hartke pressures were enormous. What is fascinating about that episode is that it began when the unemployment rate was at the lowest level since the Korean war, about 3.5 to 4 percent.

What was wrong was the overvaluation of the dollar which had been generated in the late stages of the Bretton-Wood system of fixed exchange rates.

Chairman GIBBONS. That's right.

Mr. BERGSTEN. That episode is probably the clearest point of evidence among the many I cite in my statement for thinking of the exchange rate situation as the best leading indicator of the problems you are going to have in the trade policy area.

Obviously high unemployment exacerbates and intensifies those problems. But in that period, when you had the most pressure up here to reverse the basic thrust of trade policy, the aggregate unemployment rate was quite low but the exchange rate was way out of whack.

Now the situation is doubly dangerous because you have both an overvalued dollar and a domestic recession, with the unemployment rate soaring to record levels in the postwar period.

One of your witnesses from the Council of Economic Advisers made the point before you a few weeks ago that, when we run a domestic recession, our trade balance gets better because, with the declining level of domestic demand, imports will decline.

Not so, so far this time. And I am afraid not so next year. We will have the unusual spectre of the domestic economy and domestic demand weakening, but the external balance also weakening because of this lagged competitiveness loss from the overvalued dollar more than offsetting the decline on the import side emerging from income effects.

So you have a double whammy this time, and that is going to intensify enormously the trade policy problems, as well as the underlying economic problem for this country.

Chairman GIBBONS. Well, Mr. Bergsten, you have again identified yourself as being one of the better thinkers in our society. Let me ask you, though, about a real tough question. You brought it up. Maybe you haven't given it enough thought yet.

But what should we do about trade adjustment assistance? We have people in our own committee say, well, if we are going to have trade adjustment assistance, we ought to have adjustment assistance for all the domestic ills in our country.

How should we run a trade assistance program?

Mr. BERGSTEN. It is a tough question. I know you and the committee have given literally weeks and months of thoughts to it over the years. I cannot claim to have done as much, though I have tried to think it through on several occasions myself.

Chairman **Gibbons**. Maybe you have done a better job than we have done.

Mr. **Bergsten**. Well, I wish I could say that. I have always felt trade adjustment assistance had two basic purposes.

One is obviously to achieve real adjustment as best one can. Retrain workers, relocate them, try to find job opportunities for them that would match the skills that they are being trained to adapt to.

And that, of course, is the part of it we all know has not worked very well. I don't have any magic formula other than to keep trying, but I do think that is essential.

The second objective, however, is in some sense a more critical one. It is what economists call side payments, and the term should not be viewed in pejorative terms, but rather objective terms.

What it means is that when society as a whole benefits from a particular policy, in this case an open trading policy, that those components of the society who are adversely affected in some sense have a claim on the society to help them out of their difficulty.

Part of that is the adjustment training itself. But part of it is also income support. That has, of course, been the rationale for the trade adjustment assistance payments to workers who have been thrown out of work.

Now, clearly, the budgetary demand that developed on the program over the last year or two was enormous. I think in part that was a perverse effect of making the program too generous in the first place, because there was no requirement in the program that imports be the primary source of the difficulty of the workers who were thrown out of their jobs.

And many, in fact the large bulk of the trade adjustment assistance payments in the last year, of course, went to workers in the automobile industry, even though there had never been a determination that imports were the primary source of difficulty to the automobile industry.

That is a much-debated issue as we all know, but there's never been a finding to my knowledge that imports were the primary cause of the problem.

Therefore, an enormous budgetary drain was generated on the trade adjustment assistance program to help deal with the very real problems of a major industry with an extensive number of workers laid off, but where the problem, at least on current findings, was not primarily due to trade.

So in some sense, trade adjustment assistance was dealing with a problem which, while it certainly had its trade component, was not primarily due to trade.

That is one change that, of course, one could make in a revised program. Go back to some of the earlier notions that trade adjustment assistance is aimed at those whose problem is primarily caused by trade.

The philosophical question you raise still arises. Why help them as opposed to helping somebody who is dislocated for some other purpose? That gets into a very broad debate as to whether the United States should have some more far-reaching industrial policy, labor policy, which would deal with the problem across the board.

Obviously we are not going to have that in the near future. I would therefore come back to the more limited case that I have already stated. If we are going to maintain an open trading policy in the interest of the country as a whole, there is in some sense a responsibility on the society as a whole to help deal with the problems of those adversely affected by that policy.

Trade adjustment assistance, for all its shortcomings and difficulties, still seems to me to remain the best way to try to go about that.

Chairman GIBBONS. We are going to have to rewrite that law next year. We haven't even finished rewriting it this year.

So any help that you or anyone else can give us as to what to do—let me interject here. I am no expert on Detroit. My trips there have been very limited and, obviously, I am an outsider.

It seems to me that the dislocation of the automobile industry is not temporary, it is permanent, because if we ever do, and I am sure we will eventually, return to the kind of productivity we would like to have, or the kind of market we would like to have in the automobile industry, automobiles are probably going to be manufactured in less labor-intensive manners than they are now manufactured. If we are ever going to compete, they are going to have to be.

So you are going to have a whole lot of people who are permanently dislocated for whatever cause. Newspaper advertisements in the Detroit papers last week were reflecting that there was a great need for nurses and things of that sort.

It doesn't seem very practical that you are going to be able to train an assembly line worker for a nurse's job. Maybe I just don't understand either job well enough, but it just doesn't seem practical to me that that is going to happen.

Perhaps what is going to have to happen is that there is going to have to be a major shift in population and where these people can move.

Trade adjustment assistance certainly never worked on the retraining side. It never even began to work on the relocation side.

I wonder what you think about these problems of training and relocation. What real opportunities do we have in those areas?

Mr. BERGSTEN. Well, as I think you implied yourself, Mr. Chairman, there are both regions of this country and industries in this country that are moving ahead very smartly right now, despite the recession.

As one looks at the demographic figures and economic figures on different regions of the country over the last 10 to 20 years, one does see quite a substantial shift in population and geographic locus of U.S. industry.

That indicates that a great deal of adjustment is, in fact, going on. You can see it having happened. You can see the shifts, you can see the rise in income levels.

But you can also see a very sharp bifurcation or trifurcation, or more, between certain industries that continue to do well and others that have been lagging behind. What I think is the great puzzle is that the U.S. Government has never really done very much to help that. Some would say, has gotten in the way of it. It would have gone even better without the Government.

We have never been able to find effective programs through which the Government would either speed that process, or make it more palatable to those who are having to go through the wrenching personal effects of being adjusted workers or firms.

I honestly don't know why that is. Labor economics is not my expertise. I have talked to a number of people in the field. There have certainly been efforts in the U.S. Government, incidentally, in Republican as well as Democratic administrations, to try to smooth the adjustment process.

But it may simply be that the traditional underpinnings of our society, with Government, business, labor viewing themselves somewhat as antagonists rather than as cooperators, simply make it structurally very, very difficult to achieve the kind of smooth adjustment other countries have done.

At the same time, one has to also say that our country is much bigger, much more heterogeneous than a Japan or Sweden, which have been able to carry out much more centrally directed and cooperative adjustment programs.

Therefore, I think it is inherently more difficult for us to do that than it is for them. But I am still puzzled by the abysmal record, and it is an abysmal record, that we have been able to carry out so far.

There are individual success stories here and there. The famous Studebaker reconversion in Fort Wayne during the Johnson administration. Some of the Defense Department reconversion programs from defense spending to other industries as in Wichita.

There are individual cases which indicate that it can be done. But for some reason, it has never been done on a wide-scale basis. I simply refuse to believe it can't be done.

But certainly it is going to have to have a high priority and a lot of attention from both the administration and the Congress to do it.

And it would have to have cooperation among, I think, industry, labor, and Government, really a change in the basic psyche that has underlain the basically antagonistic relationships among those three key participants in the economy historically in this country. So it is a tall order.

Chairman **Gibbons**. Mr. Brodhead.

Mr. **Brodhead**. Mr. Bergsten, you talked about the difficulty of identifying imports as being the problem in the auto industry. We have seen, of course, a substantial increase in the share of market that is going to imports. And at the same time, we see huge layoffs in the industry.

What is the problem about identifying that as at least being a major contributing factor to the difficulties of the industry?

Mr. **Bergsten**. Well, I think you have to go back to the root question of what has caused the increase in imports. If it were something to do with foreign government subsidies, dumping practices, something of that nature, certainly unfair trade practices, then one could clearly assign to that an important causal element in the layoffs here.

If, on the other hand, the surge in imports is a reflection of underlying difficulties that the domestic industries had in competing, such as making the wrong sized cars, or not adjusting to higher energy costs, and other structural factors, then one would have to say that the imports were a reflection of the underlying competitive problems of the industry, rather than being an independent cause of the layoffs.

Now, where you come out as between those two alternatives is obviously a judgment call. Certainly, the level of imports has exacerbated the problem. No question about it.

But in terms of fashioning policy response, I think one does properly have to go back to the underlying nature of the difficulty, ask whether it is temporary or more lasting, and then try to fashion a series of measures that will give most promise of dealing with the problem at its root.

The obvious difficulty, of course, if one were to restrict imports without having an assurance that the underlying factors were being dealt with effectively, then the import restraint might even exacerbate the problem by reducing the incentives and prospect for the industry to compete over time, therefore eroding the job base more substantially.

Mr. **Brodhead**. Well, what you are saying is that it is conceivable the situation could be worse than it is now. That is hard to imagine.

But you are saying if we had done things differently, things might be worse?

Mr. **Bergsten**. Well, there is, of course, import relief. That has been——

Mr. **Brodhead**. Well, of a very, very modest sort.

Mr. **Bergsten**. Right.

Mr. **Brodhead**. As I understand the test we are supposed to use, it is not why there is import penetration, it is just if there is increased import penetration. It is not why.

This is obviously a very, very difficult problem. But not everything that is difficult is complicated. It seems to me rather simple. We have a policy in this country of artificially holding down the price of gasoline. Our major competitor had a policy of artificially increasing the price of gasoline.

And so naturally, since their policy was to artificially increase the price of gasoline, they became very proficient in building small cars, because that is the kind of car the market demands when the price of gasoline is high.

On the other hand, under three administrations, we followed a policy of keeping the price down. And naturally, if the price of gasoline is 35 or 40 or 50 cents a gallon, it makes sense to drive a big car. Big cars are more comfortable, they can carry more people, they can carry more luggage. They are much better to travel in.

So the American public made an intelligent decision. They made an intelligent decision that at 35 cents a gallon, it was wise to drive a big car.

When gasoline went up to 60 cents, $1, $1.25 a gallon, they again made an intelligent decision. That at $1.25 a gallon, it is not intelligent to drive a big car, it is not worth it. So they switched. They switched their preference.

Now, from the time a manufacturer conceives of an idea of producing a car until the time that car is available in quantity in the showroom, it takes 2 to 5 years.

So when the market switched, Detroit simply wasn't ready for it. They were loathe to switch. They had switched, as you know, after the first energy crunch in 1973–74. They had invested hundreds of billions of dollars in building small cars, and when, as you know, there was an actual decrease in the real price of gasoline from, I think from 1974 to 1979, over that 5-year period. The market responded intelligently. It went back to the big cars. Remember, the whole runup in vans. During the 1975–76 recession—I am from Detroit—the plant that was working overtime was the Cadillac plant. People were buying those big cars.

There is blame all around for the situation we find ourselves in. Clearly there is blame in the White House under three different Presidents of both political parties for following this policy.

There is certainly blame in the Congress. The Congress passed the legislation. There is blame for the manufacturers for not being more forthright and steady and being prepared for the situation.

Certainly there is blame to go around in the union. They didn't foresee it, either, in the kind of contracts they negotiated, and so on. But the fact of the matter is that we are in a depression out there in Michigan, in Detroit. We have the highest unemployment rates in the country.

You know, the fact that 25 or 30 percent of the market is going to imports, certainly has to be a major contributing factor to that.

Obviously if we limited our imports, there would be more cars sold. Whether, as you say, this policy might have some bad effects in the long run, it might well have disastrous effects in the long run.

But I don't know how anybody could contest the fact that if we cut imports in half, there would be a lot more American cars sold and thus a lot more jobs.

Do you follow my logic? Do you disagree with anything I have said?

Mr. **Bergsten**. I follow your logic completely and would agree with one basic point you make. The U.S. Government certainly has some liability for the situation by its Canute-like effort to reject the world price of energy.

I think you are quite right in saying that did send out the wrong price signals, did mislead the market and, therefore, quite understandably, it failed to start producing the kind of adjustment that was necessary at the time the problem began.

At the same time, I would remind you, as you well know, that as early as 1978, President Carter did institute a clear phaseout, decontrol of the oil price, so at least from that time forward, it should have been clear that the nature of the market was changing and that the gearing-up process should begin.

And to some extent, it did begin at that time. The firms began to develop multibillion-dollar retooling plants. The second oil shock came, in that sense, at a particularly unfortunate time before the plants had been able to develop. So I agree with you to that extent.

I think the policy question remains, however, do you help the situation or compound the difficulty by putting on import relief? At the outset of your question, you suggested that it is merely the existence of imports that is indicative of a problem that should or could trigger import restrictions.

As I recall the language of the current statute, it requires that imports be regarded as a substantial cause of the problem, which has been defined to mean a cause greater than any other cause.

So then, one gets into a very admittedly tricky line of analysis as to whether the imports are independently the greatest single cause of the problem or whether, as I said earlier, they are a reflection of more fundamental underlying problems, to be sure exacerbating the difficulties in the short run.

But I agree with what you said at the end of your question, that maybe to restrict the market now, to cut imports in half, for example, might, hard as it seems, make for a more difficult problem over the long run and make the job base in Detroit erode even more substantially over that longer run period.

I know it is very hard to get to that long run, given the terrible urgency of the short-run situation. But I do think economic history shows us that, and we have to have those factors in mind as we go about making policy.

Mr. BRODHEAD. I would like, if the chairman would indulge me for another couple minutes here——

Chairman GIBBONS. Certainly.

Mr. BRODHEAD. To try to pursue that point with you. I suppose the argument that those who favor some kind of restriction on imports are making, is that the automobile industry is going as fast as it can in trying to respond to the new realities. That is, that they are spending as much money as it is prudent to spend, in fact, more money in the case of some of the companies, than it is prudent to spend on modernization. The union has now agreed to renegotiate contracts. The industry is moving toward robotics. They are doing everything they can do, especially in the face of the fact that nobody in the industry is making a nickel. What they need is time. They need time to put these programs into effect.

The administration responded to this line of argument to some degree in the spring this year, with the agreement it reached with Japan. Many argue we should go further and try to provide even greater relief, and that the march toward the high-quality small car is inexorable. No matter what one does about exports, we are headed down that road and dare not turn back.

So providing some sort of import relief would preserve jobs and preserve the industrial base until the time when our industry is more competitive.

They are becoming, I think, more competitive every day. But you are making a counter argument that this could possibly be damaging, and I would like to hear your thinking on that.

Mr. BERGSTEN. You mean that the——

Mr. BRODHEAD. Well, you are venturing the opinion that it might be true, that if some additional relief from imports were granted over and above the agreement which the administration has already negotiated, that this might do some harm to the industry.

I would like to hear your reasons for saying that.

Mr. BERGSTEN. It is a matter of degree, as you point out. What I was implying was that if the United States were to take extreme measures to restrain imports, you mentioned cutting the level of imports in half, it seems to me that would replicate what was done in 1974 by sending a very wrong signal to the market.

That would say to the market, the U.S. Government is going to protect this domestic market for the domestic auto producers. Now it seems to me the implication of that for the domestic automakers could only be to reduce their zeal to move as fast as they can to as competitive a position as they can possibly reach.

The history of trade restrictions is that they are not temporary. Despite the words that are often enunciated when trade restrictions are put into place, history shows that they continue for many, many years.

If one could credibly apply modest relief for a short period of time so that by year *x*, that we can foresee fairly clearly, you will be in good shape and won't need it any more and it comes off unalterably, that would be one thing.

But, first of all, we can't really foresee the future that well on either the positive or the negative side. Moreover, we do know from the history that, once implanted, import relief measures tend to stay there. If that were the case, which is what I am assuming, then I think you would have an error of policy almost as bad as the one you and I agree about, which tried to reject the market signals on energy.

Here you would be rejecting the market signals in the auto industry itself. I think that can be almost as bad, if not worse.

Mr. BRODHEAD. I follow what you are saying. Let me ask you this question. What if you surmise that the situation in the industry is so bad today that there is really only one American manufacturer that is going to survive as an auto producer in North America and that is General Motors.

I am not saying that as a prediction, but there are lots of intelligent people around that think that that might well be the case. The Chrysler Corp. is obviously, as everyone knows, in a very tenuous situation.

Ford Motor Co. will survive as a corporation, but it may not survive as an auto producer in North America.

American Motors, of course, is just barely hanging on.

What ought to be done about this issue if someone were to say, well, there is really going to be only one company. There is no question, if we keep on the way we are keeping on for 2 more years, the result will certainly be that there is only one company that will survive, and that it will be General Motors, as an auto producer in North America.

If that is the case, would that alter your view of what ought to be done about the problem?

Mr. BERGSTEN. Well, that is an extremely hard question. As I am sure you know, even before the recent crisis situation in the autoindustry, going back 4 or 5 years, there have been a number of analysts of that industry who have argued that over the rest of this century, maybe even over the decade of the 1980's, there would, in any event, be a consolidation of the existing automobile firms down to a much smaller number than we have today, speaking on a global level. Recalling that we had consolidation of the autoindustry within the United States over the last 30 or 40 years from several hundred companies down to now three or four. Recall also that the underlying economics of the automobile industry pushes us inexorably in that direction.

That was even before the recent crisis. To be sure, the recent crisis would push things in that direction. I think such an outcome, just to hypothesize with you, has almost paradoxical results for international trade policy.

If we thought it were inevitably going to happen, then it would require us to maintain an open trading policy in the automobile industry because, without it, we would have no competition within the domestic market.

Now you are raising the other question, should we try to head it off, among other things, by putting on import restraints in the short run? I certainly would be very worried if only one automobile company were to survive in the United States. I think that would run into dangers in terms of not only our industrial structure and national security capability, but our ability to avoid at least the risk of adverse pricing situations in that industry over time. So I would be very reluctant to see that happen.

At the same time, I point out there are a lot of people who think it is likely to happen over the long run anyway.

Mr. **Brodhead**. Yes.

Mr. **Bergsten**. If that is true, then you have to have an open trade policy.

Mr. **Brodhead**. But those people thought it would happen somewhat differently. They thought it would happen, marriages would be formed between American producers and foreign companies. Most people, I think, believe that is inevitable. You know, I think that is the best outcome we could hope for is that Chrysler would marry in some form or another, have some form of merger or takeover or something with a foreign company. Ford, the same.

It's already happened to some degree with American Motors. The problem at least, we went through this at the time of the Chrysler difficulty, is that the economic outlook for these companies is so bad that they can't attract any mates.

Mr. **Bergsten**. Well, as you pointed out, it's already been happening with American Motors. There have been partial linkups in the past between Chrysler and several foreign firms.

Some of the foreign subsidiaries of the firms, Chrysler in Mexico, for example, Ford in several parts of the world, are doing well at present. So I would not be so pessimistic about the possibility of linkups of that type.

Certainly the overall demand situation in this country and most other parts of the world make that outlook less likely now than a few years ago, or, I think, a few years in the future.

But I would not be so pessimistic. I think that linkups of that type, if one believes that is the way to go, or inevitably the way one must go, there is a very good prospect that will happen.

Those companies have enormous resources, both technological and in terms of their people. They have got market footholds, after all, in what remains by far the biggest market in the world, our own.

I would think they would be very attractive. If I were a potential foreign mate for one of them, I clearly would be sitting back right now and not making my bid today. I would wait to make it a little bit later when the price might be better.

That is a cutthroat business. I think no one should be surprised by that. But I would not share in the pessimism that it would be impossible or unlikely that American firms, if that is the way they decide they want to go, could work out effective relationships with other strong companies from other parts of the world.

Mr. **Brodhead**. Thank you. And thank you for indulging me, Mr. Chairman. I know I have gone beyond my time.

Chairman **Gibbons**. No, that's all right. I want members, whenever we have got a witness like this, or any other that you want to really get as much out of as you can, to go right ahead.

After all, I am the one that got him over into automobiles. So I will share that responsibility.

But I think we can't, in all this, overlook what I think Mr. Bergsten has said very clearly, that our objectives in trade are great, our goals are great. Our strategy is weak. We don't have a clear-cut strategy.

We were gaining ground, primarily in the early part of the 1970's, the mid-1970's, primarily because of the more realistic valuation of the dollar. Now we have shot ourselves in the foot again by having an overvalued dollar.

Some of it is unavoidable. Some of it certainly couldn't have been avoided. I think we have got a very interesting amount of information out of Mr. Bergsten.

Mr. Frenzel.

Mr. **Frenzel**. Thank you, Mr. Chairman. Unfortunately, at this time I have to be interested in another committee hearing, but I did want to stay long enough to tell the witness that I have appreciated his leadership in this field for a number of years.

While I don't always agree with the witness, I must say, you bring experience and expertise and good thinking to the subject, and your testimony has been very helpful.

With that, Mr. Chairman, I will excuse myself.

Mr. **Bergsten**. Thank you very much, Mr. Frenzel.

Chairman **Gibbons**. Mr. Vander Jagt?

Mr. **Vander Jagt**. No questions.

Chairman **Gibbons**. All right, fine. Thank you very much, Mr. Bergsten. We appreciate it. Your entire statement will be included in the record.

Our next witness is certainly no stranger to this subject, nor to this committee, Mr. Alan W. Wolff, former Deputy USTR, for many years a member of our governmental team, a prominent lawyer here in Washington and the world.

Mr. Wolff, we welcome you.

STATEMENT OF ALAN W. WOLFF, PARTNER, VERNER, LIIPFERT, BERNHARD & McPHERSON, WASHINGTON, D.C.

Mr. **Wolff**. Thank you, Mr. Chairman. I am in good company this morning, appearing after Fred Bergsten and before Harold Malmgren. Fred has addressed some rather cosmic macroeconomic issues, as compared to those I will address.

What I intended to do for this morning is look at the process of trade policy formulation in the U.S. Government. My remarks are drawn from my experience in trying to explain to private clients how the process works nowadays. And they are rather incredulous. They don't understand why Washington doesn't anticipate their problems. Or at least when Washington is told about their problems, why the Government does not automatically apply appropriate remedies.

They don't understand why we appear to be so ill equipped to deal with even the largest problems, such as steel or autos, or even know that some areas are problems on occasions, such as high-technology electronics.

Yet, we do ultimately, as a country, intervene in trade, usually suddenly and somewhat disruptively, when had some action been taken earlier, trade intervention might have been avoided.

It appears to me that our experience of the lurching interventions that we make are explained by our philosophy which embraces the ideal of free competition in international markets without Government intervention, and our belief in assuring equity to individual participants in trade.

Our philosophy of nonintervention and free competition assures that the U.S. Government has an absolute minimum of expertise or interest in what is happening in the world economy due to foreign competition in individual sectors.

I think that is one of the reasons why this set of hearings is so important. You can shed some light on what is taking place in individual sectors, as the first witness this morning did with respect to nuclear power generating equipment and a number of other areas.

For our decisions as to when the Government should intervene in trade, we rely on a set of procedures that allow individual complainants to bring grievances about unfair or otherwise injurious foreign trade practices to the attention of the Government for remedy.

The first case under section 301 was a case brought by a small company that was trying to get some refrigerators into Taiwan. The U.S. Government then turned a considerable amount of attention to the problem of selling a relatively small number of refrigerators in Taiwan because that situation was unfair to that particular American citizen.

We can't depart from our basic notions of due process and fairness. I wouldn't suggest that we do. These precepts are part of the great strength of our country, and they are necessary if public support is to be maintained in a democracy for an open trading system.

However, it is clear that had the question been addressed, most trade policy officials would not have chosen the distribution of refrigerators in Taiwan as something that should warrant a significant allocation of scarce Government resources of time and attention. What I would like to suggest this morning is a few changes in how we should go about our business in the trade area.

Our desire to extend to the international sphere our domestic philosophical concepts of a market free from State intervention, and procedures giving due process to individual complainants, does not meet with much favor by our trading partners. There is far more emphasis abroad on preservation of the freedom of action of each sovereign nation to utilize economic policies to foster national, social, and economic objectives.

This is particularly true of Europe. Today, one reads about new programs in the high-technology electronics areas. Our steel industry tried to tell us for 10 or 15 years what was happening abroad, and we were unable to comprehend how to deal with the problem. I know annoyance has been expressed about the disinvestment that has taken place in the steel industry from time to time right up to the present, but this disinvestment is understandable. It is the same sort of process that takes place with individuals dealing with the savings and loan institutions—when there just isn't a return on investment, there is an out flow. That is all right if it is the free market determining that disinvestment, but it isn't. There is a great deal of government intervention abroad.

MITI in Japan has an even more elaborate vision of the future which has created a consensus view of where the Japanese economy should be headed, far more organized than what Europeans have done. And the developing countries certainly intervene in the most direct way possible to obtain economic planning objectives.

In the midst of the sweeping changes in the international economy, there are two groups that have sat passively by, waiting for individual petitioners to bring problems to their attention on a random basis. These nonparticipants in the passing scene have been U.S. trade policy officials, and the officials of the institution we created in our image, the GATT in Geneva. Whole sectors rise and decline here and abroad, agricultural prices are being set that affect our farmers' markets abroad, competition policy which is strikingly different in many countries allows major industries abroad to build up strengths which will seriously affect our industries, and are already doing so. Investment flows are being controlled.

The future major confrontations are in fact visible now but are not yet the subject of sufficient examination by our Government—although it is worth noting that the Department of Commerce is beginning some steps toward changing this.

I feel that we have to do a number of things. Having a policy of laissez faire need not mean a policy of keeping our eyes closed to the changes which are taking place in the private sector. There are adverse effects upon the structure of our economy from the actions of the Japanese, the Europeans, the Mexicans, and the Brazilians and others are doing. In fact, they are beginning to determine our national economic priorities for us by default, our default.

Our self-imposed ignorance can only be considered of benefit to foreign producers only in the short run. Ultimately our cumbersome legal procedures swing into effect and we close our market. This process can be of little comfort to anyone, domestic or foreign. I would argue that we must improve our ability to anticipate and deal with trade problems by improving our analytical capability in both the industrial and agricultural sectors.

One good illustration is the situation described this morning. If we continue for the next 10 years with financing which is not competitive for nuclear power equipment, or for conventional power generating equipment, will we still have that industry, or still have that industry in any internationally competitive sense?

This is a serious question that has to be addressed. What sort of Eximbank we have has to be a question that goes beyond budgetary considerations of the moment.

Second, I would suggest we need a trained career trade policy service. There is an excessively high degree of change with changes of administrations.

It is not just a question of changes of administrations, however. There is a continuing erosion of trade policy expertise in the Government. You have a number of people sitting beside you and around you this morning who are aware of the frustrations of Federal service.

I think it is not only a pay cap. It is a problem of the attitude fostered by Presidential candidates in the last two elections which must be changed if our country is not going to suffer a continued, serious deterioration in the quality of our civil service over the longer term. We need some continuity when we sit across the table from, as a country, from negotiators who sit there for a career.

I would also suggest, although it is an extraordinarily yawn-provoking subject, that trade reorganization be addressed. At some point, such as January 20, 1985, when there is a change in the administration, there should be a single trade department rather than the two we have currently. I think there are a number of ways of preserving the strengths of the collective decisionmaking process, the interagency process, such as by having the Secretary of Trade also chair a Cabinet committee on trade policy. For this purpose, he should have the support of a small, independent staff, having no line responsibilities. It should be located in the Executive Office of the President. Its sole function would be to present options in an unbiased fashion for decisions by the Secretary of Trade and the President.

I would also suggest that we need reform of the GATT. We don't have a GATT as an institution, really. We have an international contract, an international agreement with very little in the way of international institutional underpinning.

I think the GATT secretariat should assume a greater role. International surveillance of trade policies and measures should be encouraged. Country consultations on trade policies, along the lines the IMF holds annually on macroeconomic policies, should be considered on the trade side.

In terms of further evolution of the substantive rules, in retrospect I think we made a mistake. Everyone was tired of negotiations back in 1979. We should have instituted a work program at that time for the 1980's in the GATT and we didn't.

There were a number of areas to attack. There was unfinished business in the safeguards area and the Government procurement renegotiation. These will require substantial prenegotiation and preparation that we could have started then.

There are also whole new subject areas, such as services and investment performance requirements. There are a number of areas that could have used a work program at the time. The GATT ministerial next fall could be used to launch such a program. There is little in the way of an international consensus for it and an enormous effort will be needed at the highest political levels if it is to get that underway.

This is vitally important, particularly because we are missing today the sense of international cooperation which existed during the Tokyo Round negotiations. And this is dangerous in a time of the highest unemployment in Europe since the immediate recovery period after the Second World War.

I think an OECD style trade pledge in the GATT might be a useful thing at that time as well.

One question is how to get an international consensus about what negotiations should address. The Rey Committee in the early seventies was helpful at that time. Perhaps one could constitute a group of international experts to address themselves to preparing a statesmanlike vision of what direction international cooperation should take.

In terms of domestic consensus, I think that the Williams Commission performed a useful function in the late sixties. Either a similar commission, or perhaps the Presidentially appointed Advisory Committee for Trade Negotiations, should try to provide suggestions for national trade programs. As Fred Bergsten said, what we are missing is a strategy.

In conclusion, Mr. Chairman, I would just address one other thing. That is maintaining a domestic political consensus for a liberal American trade policy.

For example, I don't agree that import relief is generally not to be granted. The statute says that the President is to grant import relief, if the statutory criteria are met, unless it is not in the national economic interest to do so. Part of the bargain structure to allow liberalization is the granting of relief when an industry gets into trouble with imports. That is easily forgotten every time a case comes up for decision.

I would also say trade adjustment assistance is part of the domestic political bargain struck in 1962 to get major trade liberalizing authority, and it was assumed to be in place when the labor movement did not oppose the trade agreements in 1979. No set of trade agreements could pass the House by 395 to 7 and the Senate by 90 to 4 over the opposition of organized labor.

Labor was not in opposition to that set of agreements. So there is, I would say, an uneasy, fragile domestic consensus for trade liberalization as long as there is a sense of fairness in the trade policy process. The repeal substantially, of adjustment assistance, undermines that consensus. It is not the right program, perhaps. There is much wrong with it. It should be anticipatory, and it isn't. It comes well after the fact. It is inadequate.

There is inadequate emphasis on training. We do not even have a national employment register so that people in one State can find out easily what jobs are available in another State. We don't have an educational system that is geared to our job market, from the highest level of skilled jobs to the lowest. Like electrical engineers. We graduate half the number of electrical engineers that Japan does each year with twice the population of Japan, despite enormous demand here.

I don't agree that changing the access criteria was the correct way to approach reform of adjustment assistance. I think that if imports are an important cause, then trade adjustment assistance should be granted. We did need to change the benefit levels.

Now we have 210,000 unemployed auto workers, many of whom will never be rehired because of changes in the structure of that industry. But there is no national program, no answer for them. And that is a tragedy. I don't see sufficient effort being addressed to remedy that problem.

In conclusion, Mr. Chairman, I would hope that there will be some process perhaps engaged in by the staff at the conclusion of this set of hearings to winnow through what has been said and try to help give the administration and the Congress some ideas on a strategy and direction for our national trade policy.

Thank you.

[The prepared statement follows:]

STATEMENT OF ALAN W. WOLFF, PARTNER, VERNER, LIIPFERT, BERNHARD & MCPHERSON

"Setting National Priorities in Trade Policy Formulation" is a rather dry sounding topic. My initial thoughts ran to alternative topics, such as "The Placement of 'Pringles' on Our List of National Trade Priorities" or "Why Aren't the Japanese Pressing Us to Allow 'Calpis' (a Japanese soft drink) Into Our Market?" I rejected these topics because they sounded frivolous.

Nevertheless, with the news emerging from Tokyo a few weeks ago of European trade negotiators attempting to gain entry into Japan for chocolates, and our own government currently questioning Japanese restrictions on entry into the Japanese market of our soft drink "Squirt," either of these alternative topics might have served as a useful point of departure for today's inquiry.

THE CONCEPTUAL CONTEXT OF POLICY PLANNING

United States policy makers come to their jobs with a philosophy which embraces the ideal of free competition in international markets without government intervention and a belief in assuring equity to individual participants in trade.

The basic philosophy of avoiding state intervention, sound as this philosophy is in the abstract, deprives policy officials of an appropriate analytical framework by which to judge the importance of trade policy issues in a world economy characterized by a high degree of government intervention. There was some sentiment in Congress when imports of shoes were increasing in the late 1960s and early 1970s that the shoe industry was a "basic industry" which should not be allowed to be lost to the United States. This, however, was a minority view. We do not rank our various industrial or agricultural sectors in terms of importance to the national economy. Trade policy decisions have not been taken on the basis of the importance of a particular sector to the national security or a national plan for the economy, although arguments have been made by the proponents of import relief along these lines from time to time.[1]

To some extent, of course, political influence has controlled trade policy decisions. This has been true of oil and certain farm commodities, as well as textiles (to a more limited extent). However, the importance to the economy of steel and autos has, despite political influence, not translated itself into the setting of clear national priorities for these sectors. This stems not only from the existence of competing interests (e.g., consumer interests), but from our strong belief that it is not the role of government to set national economic objectives for industrial sectors.

For our decisions as to when the government should intervene in trade, we rely instead on procedures which allow individual complainants to bring grievances about unfair or otherwise injurious foreign trade practices to the attention of government for remedy. Our trade policy is, therefore, to a large extent, shaped by Anglo-Saxon jurisprudential concepts designed to deliver equity to individual participants in trade. Thus the government most often takes up trade issues by reason of complaints filed by private parties. The first case under section 301 of the Trade Act of 1974 was brought by an American distributor of refrigerators who wished to gain access for his product to Taiwan. The U.S. Government turned considerable attention to his problem of selling a relatively small number of refrigerators in Taiwan because the existing situation was unfair to one of its citizens.

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[1] While trade decisions have not been taken for reasons of industrial policy, they have from time to time been based on foreign policy considerations.

I would not suggest that we depart from our basic notions of due process and fairness. These precepts are part of the great strength of this country and they are necessary if public support is to be maintained in a democracy for an open trading system. However, it is clear that, had the question been addressed, most people would not have chosen the distribution of refrigerators in Taiwan as something that should warrant a significant allocation of scarce government resources of time and attention. On the other hand, a fair number of people in this country might have put the American shoe (or steel or aircraft) industry relatively high on a list of national priorities, if anyone were establishing such a list of priority sectors.

It is our desire to extend to the international sphere our domestic philosophical concepts of a market free from state intervention and procedures giving due process to individual complainants. Internationally, however, there is no consensus favoring this approach. There is far more emphasis abroad on preservation of the freedom of action of each sovereign nation to utilize national economic policies to foster national social and economic objectives. Obtaining for their citizens remedies in international fora is not a priority objective of most other governments.

Our aversion to setting national sectoral objectives is, by and large, not shared abroad. The post-OPEC, post-1973, period in Europe has witnessed a substantial increase in public sector activities. National programs to foster high technology industries through government funding, facilitation of joint research and development, and government intervention to obtain technology from abroad are increasing. At the same time, intervention abroad to maintain employment in industries which are stagnating or declining, such as steel, persist, desite longer term efforts to reduce excess capacity. The United States was never well prepared to deal with problems in international competition caused by state intervention, such as in steel, and is even less prepared to deal with problems caused by new programs for the newer high technology industries.

National economic priorities are even clearer in Japan than in Europe. MITI has evolved a "vision" of the future through its continuous consultation process with the private sector. It created a consensus view of where the Japanese economy should be headed and how the government and firms can cooperate to obtain the shared objectives. There is currently a high degree of fascination in this country as to how the Japanese system works, given the enormous successes that it has had in a number of key sectors. American industry, government and academia are just beginning to examine the inner workings of that system. The current level of interest is indicated by the 80 page series of articles contained in the recent issue of Business Week devoted to the Japanese strategy for the 80s for information processing industries.

The developing countries are, if anything, clearer in their objectives than Europe, Japan or Canada, and less subtle in the means that they employ to obtain their objectives (even less subtle than Canada). While we are operating on precepts of 18th century British liberalism, the developing countries are operating on the precepts of 19th century British socialism (as Pat Moynihan points out in his book about his activities in the United Nations, entitled "A Dangerous Place"). The developing countries appear to believe that their economies' development cannot rely upon wealth being created but must instead depend on it being redistributed by state intervention. Thus it makes sense to developing country policy-makers to intervene in the most direct way possible to obtain economic planning objectives. If an auto, aircraft, or computer industry is to be developed, foreign investment will be allowed in under very strict conditions and competing investors will be denied entry. Export performance requirements and other restrictions will be applied to ensure that imports are limited and exports are increased. The only international principles which these countries would readily accept are those compatible with complete freedom of action for developing countries.

UNDERSTANDING HOW THE WORLD WORKS

In the midst of sweeping changes in the international economy, two groups have historically sat passively by, waiting for individual petitioners to bring problems to their attention on a random basis. These nonparticipants in the passing scene have been U.S. trade policy officials and the officials of the institution that we created in our image, the GATT in Geneva.

Whole industrial sectors are rising and declining, here and abroad. Agricultural programs and price levels are set in major markets abroad to which American farmers sell. Competition policy, strikingly different from our own, is allowing combinations of major industrial firms to build up competitive strengths which are seriously affecting our industries. National programs are being put into place to close markets and build a base for exports through government control and subsidization of investment. The causes of future major confrontations over trade are visible now, but are not yet the subject of sufficiently intensive examination by our government,[2] nor to my knowledge, any examination at all in the GATT. We are waiting for the harm to be done, and for the cases to be brought.

And when those cases are brought, another factor comes into play—the adversary nature of the relationship between the U.S. Government and the private sector. When business and labor come in to the government to point out that a foreign practice is causing harm to United States' interests, there is a presumption under our philosophic outlook (as opposed to our legal system) that the complainant is at fault, that the industry involved is not competitive for a variety of factors largely of its own making. This presumption is the one contained in most editorials in our major newspapers. Moreover, the petitioner must overcome the obstacle of fitting the facts to a particular legal remedy under both international and domestic rules. Unfortunately, there is an increasing mismatch between the remedies and the problems, which have grown far more complex as traditional trade barriers have been removed. What is given insufficient recognition is that different kinds of economies are now competing directly without the buffer that traditional trade barriers supplied, and this competition is not always readily classifiable as "unfair" in traditional terms.

Further confusion is added by the government's concept, often present, that it is to be an impartial judge of the domestic complaint, rather than a party at interest which can help develop the facts on which to base a complaint. Government staff has, on some occasions in the past, taken the point of view that it cannot "prejudge the merits of allegations," as this would destroy the agency's impartiality, despite its knowledge of the "unfair" practices alleged.

The passive role that we have assigned to our trade policy officials, as well as to the GATT as an institution, can only lead to making crises out of international trade problems, as no curatives are applied at an early stage when the trade distortions are being created. In the end, this leads our government to be far more interventionist than its philosophy would suggest. Ultimately trade restrictions are required where other, less disruptive, steps might have been taken at an earlier stage of the problem. Steel and autos are examples of this phenomenon. This possibility also leads the GATT as an institution to be relatively irrelevant to major trade problems. Again, steel and autos are examples.[3]

SOME SUGGESTED CHANGES

a. Industrial Policy Analysis Capability

A policy of laissez-faire, does not need to be implemented by our traditional means of les yeux ferme (eyes closed). The longer that we spend in self-imposed darkness as to what the effects are of the structure of the Japanese economy on international competition, as to the effects of European "telematics" policy, or of the computer industry plans being adopted in Mexico and Brazil, the more we will be condemned to allowing these countries to determine our national economic priorities for us, and when we do react, ultimately, it may be to close our borders.

It has taken years for the U.S. Government to begin to understand what our steel industry was telling it about foreign government intervention. We are sufficiently apprehensive about preventing our government from having any role in our economy (other than in negative terms, as viewed from the perspective of maximizing U.S. international competitiveness, such as environmental and antitrust policies), that we have not examined the degree to which disinvestment in the steel industry in the United States is caused by foreign practices. Our self-imposed ignorance may be considered a benefit to foreign producers only in the short run, however. Ultimately our cumbersome domestic legal remedies swing into effect. This process can be of little comfort to anyone, domestic or foreign.

Our ability to anticipate and deal with trade problems would be greatly enhanced by improving our analytical capabilities in both industrial and agricultural sectors. Knowing what is happening, and being able to assess policies intelligently, is not and should not be seen as a step toward "picking the winners" (industrial planning). At a minimum, we should be aware of the costs of our own public policies and actions. (For example, what does the current loss of competitive export financing for nuclear power plants or commercial aircraft portend for the long-run competitiveness of the United States in these sectors?)

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[2] Lionel Olmer and his staff at the Department of Commerce have initiated some steps aimed at rectifying this deficiency, at least in some sectors.

[3] This is not, however, to denigrate the role of the GATT as a contractural agreement which has been generally successful in preventing developed countries from resorting to traditional trade restrictions as protectionist devices.

b. A Trained Career Trade Policy Service

The U.S. civil service system differs sharply from those of the countries with which we negotiate. We rely upon political appointees as our representatives down to a level (often to that of deputy assistant secretary) that is unknown in foreign governments. Thus, retention of senior career trade policy officials is the exception rather than the rule in the United States. This has been seen as a serious weakness by many, such as Senator Long.

There should be ways to increase continuity at a senior level without sacrificing the political responsiveness that our system demands. In the trade area (as well as perhaps other areas) we should move toward a system of having a permanent "career" senior level official. An official at this level would be responsible for making sure that a highly trained bureaucracy (in the best sense) was maintained to secure U.S. objectives. His role would be to serve as senior advisor to the top level political appointees in the trade agency. He should not generally be a public spokesman for the agency. To move to this system, it would be necessary to have a different public view of the career civil service.

We have had two Administrations which have run for office partially on a platform of denigrating government service. Once in office, they have spent little time on thinking of ways to enhance the public standing of career service nor how to improve government performance. A President who belittles government employees does not cure the problem which he perceives, he worsens it. In foreign countries, the status of a career in government is far different, and often the best graduates of the best schools seek government service. We have not had an emphasis on recruiting "the best and the brightest" since John Kennedy's Administration.

If each new administration comes into office, believing that career officials are at best disloyal and at worst malingerers, we cannot have the best possible representation of our trade interests. If, further, as a nation we become so suspicious of personal integrity, so that there cannot be a interchange of career government personnel with career private sector personnel due to excessively rigid conflict of interest rules, we further diminish the strengths which our system currently has.

Combine these limitations with high inflation and a pay ceiling (fortunately a problem being temporarily ameliorated), and we are inadvertently working to assure that we have a minimum of maturity, experience and excellence in our government service.

c. Reorganization, Again

There is no topic that can provoke quite as much boredom in the American trade community as trade reorganization. However, we still don't have the system quite right, and change is needed.

Reorganization Plan No. 3 of 1979, which set up our two departments of trade (USTR and the Department of Commerce), was always seen as an inadequate halfway house. It was a way of remedying some existing defects (bringing investment and commodity negotiations into USTR, and putting enforcement of the countervailing duty and antidumping statutes in an agency that would assign a higher priority to enforcement of these laws). But political constraints at the time prevented the adoption of a more rational structure.

Although the current incumbents at USTR and the Department of Commerce get along remarkably well, this does not mean that the current organization of trade policy formulation and implementation is optimal. There is confusion, redundancy, and inefficiency caused by this structure.

I would propose that, effective January 20, 1985, the U.S. Trade Representative's office and the Department of Commerce cease to exist, and be replaced by a Department of Trade. The Department of Trade would be a small agency, as departments go, and would have all of the trade functions of the existing agencies as well as an enhanced industrial analysis capability. The Secretary of Trade would both be the chief officer of the new trade department and the chairman of an interagency cabinet policy committee which would be staffed by a small, independent group in the Executive Office of the President. This staff would have no line responsibilities, and no public role. Thus the USTR's function of impartial coordinator of trade and investment policy would be maintained. The sole function of the staff in the Executive Office would be to present options in an unbiased fashion for decision by the Secretary of Trade, with the advice of the cabinet committee, or the President. The interests of labor, industry, agriculture, etc., would be considered at the highest level in this forum.

There have been other instances of officials wearing two hats, such as George Schultz serving as chariman of the Economic Policy Board and Secretary of the Treasury in the early 1970s. This format worked reasonably well for macro-economic policy formulation.

The creation of a new department is necessary for a variety of reasons. It would be more efficient. It would give trade an appropriate priority in government decisionmaking. It would allow the creation of a trained career civil service for trade policy formulation and implementation. It would permit increased attention and review of the effects of other government policies on the international competitiveness of U.S. industrial and agricultural sectors.

d. Building International Institutions

The GATT could be a valuable institution. Instead, it runs the risk of becoming increasingly irrelevant to major trade problems. This is not in our interest nor is it in the best interests of trading nations generally. We are still missing the institution (the "International Trade Organization") that was to be one of the building blocks of international cooperation after World War II.

We should find the means of agreeing tacitly or explicitly with other trading nations to have the GATT Secretariat assume a more active role in trade relations among GATT members. International surveillance of trade developments and trade measures should be encouraged. Country consultations on trade policies, such as the International Monetary Fund's annual reviews of national monetary policies, should be considered. Moreover, participation by GATT experts in country missions of the Fund and the World Bank should be welcomed. Our international monetary and development finance institutions are able to dispense a good deal of advice on a variety of economic issues, despite the fact that these matters are considered well within the sovereignty of the individual members of those institutions. Yet the GATT offers no such trade policy advice, although it is equally needed.

The international monetary system has acquired the institutional means (albeit not perfect) of evolving to meet changed conditions. It builds a consensus for appropriate policies through a variety of consultative forums. The parallel institutions for dealing with international trade are still undeveloped (either in the GATT or the OECD). Thus the GATT Consultative Group of 18 has never become a forum in which a meaningful exchange on trade policy issues could take place. While we have a domestic political system in which policies are made most effectively by thorough consultation with those whose interests are affected, there is no parallel process internationally in which the effects of national policies on others are discussed in a manner which can lead to an amelioration of adverse effects on others, or at least to an understanding and tolerance of those effects to the extent that modifications cannot be achieved.[4]

In this period of slow economic growth, interspersed with stagnation and recession, which has followed the oil embargo of 1973, the pursuit of individual national economic objectives with a minimum of consultation or international surveillance can only lead to sharp conflicts. We are in serious need of better international institutional arrangements for dealing with problems of international competition and economic adjustment.

e. Further Evolution of the Substantive Rules

As the problems of international competition are increasing, and the types of government activities and their effects on others are changing, international agreement on appropriate standards of government behavior must be adjusted as well. We are, however, peculiarly ill-equipped to deal with the new problems, both because of our own lack of understanding of the problems of international competition and because of the limitations inherent in existing domestic and international institutions.

In retrospect, we should have begun a new preparatory phase of pre-negotiation (e.g. data collection) in the GATT at the close of the multilateral trade negotiations in 1979, as was done in 1967 at the close of the Kennedy Round. Intensive international preparations are not now underway for negotiations to address new problems ("new" in the sense of our recent discovery of them) the way nontariff barriers were attacked in 1967. We still know very little about the problems of trade in services[5] and the distortions in international trade of both goods and services which are caused by investment policies.[6] We do not understand well the role of national industrial policies as they affect international competition.[7] There is also unfinished business from the Tokyo Round of negotiations, such as a safeguards code and expansion of the government procurement code, on which little international consensus exists.

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[4] The Steel Committee, which attempted to accomplish this in one sector, is only a partial success.

[5] These issues are addressed in these hearings by Harry Freeman and Joan Spero.

The GATT ministerial scheduled for late 1982 should put into place a work program for a new round of multilateral negotiations in the GATT. An extraordinary effort will be required at the highest levels of government if the GATT ministerial is to accomplish this much. Also needed from the GATT ministerial meeting is a declaration of common principles (a broader "OECD-style" GATT trade pledge) to slow the current regression to mercantilist national policies.

f. Building an International Consensus

The lack of a common endeavor, such as major trade negotiations, which helped hold the world together in the mid-1970s, is absent. Lack of a joint commitment to seek actively mutually acceptable negotiated solutions to problems is in itself a danger in the current period of recession. In the mid-1970s, the process of trade liberalization was compared to riding a bicycle—if you stopped, you fell over. Today the recession in Europe is deeper. Unemployment is higher. And, we do not have the forward momentum today that may be necessary to overcome major differences in philosophy and policy between ourselves and our trading partners.

A major question, then, is how to rekindle the spirit of cooperation which has been necessary for every major negotiation, including the creation of the Bretton Woods institutions in the mid-1940s. One possibility would be to create a prestigious multilateral group of wisemen, such as the Rey Committee was in the early 1970s, to suggest common objectives to Europe, the United States, Canada, Japan, and the developing countries, for economic cooperation. Each of the major international issues noted above requires more exploration before negotiation will be possible. More is needed than the creation of inventories of national practices which cause other countries difficulties, on which the GATT can begin to work. A statesmanlike international vision is needed of the direction which future international cooperation should take in trade.

g. Creating the Necessary Domestic Consensus

On a parallel track, perhaps the United States ought to constitute its own national commission working on U.S. trade objectives, a function which the Williams Commission served in the late 1960s.[8] Alternatively, a subgroup of the existing Presidentially-appointed Advisory Committee for Trade Negotiations could undertake, if this were a function adequately staffed and funded, to hold public hearings and commission the writing of papers by scholars and experts to explore the paths which future U.S. trade policy should take, as well as addressing the institutional issues raised in this testimony.

h. Maintaining the Domestic Political Consensus

A part of the bargain struck for trade liberalization was the introduction of Trade Adjustment Assistance into law two decades ago. The amendments made to the Trade Adjustment Assistance (TAA) program this year threatens to undermine further the already uneasy domestic political consensus which permits the continued efforts of this country toward trade liberalization.

An important part of the compact with American labor, which enables the U.S. Government to continue to work for a more open world trading system, is the maintenance of a meaningful trade adjustment assistance program. This program was designed to serve two purposes—it was to compensate those who lost their jobs so that the nation could benefit from increased international trade, and it was to facilitate adjustment by relocating and training workers for better employment opportunites. One can agrue about how best to shape the program, or whether compensation or adjustment is to be a preferred objective, but it is a political fact that an effective adjustment assistance program adds support for a balanced liberal trade policy. Removal of that program can only accelerate the deterioration of domestic support for a liberal world trading system. Moreover, if an industrial analytical compatibility is created, adjustment assistance could anticipate rather than follow problems of adjustment. The result could well be to avoid the need for government intervention.

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[6] Investment issues have been considered in a Labor-Industry Coalition for International Trade publication entitled "Performance Requirements," published in March, 1981. They are addressed in these hearings by Larry McQuade and Howard Samuel.

[7] The testimony of the High Technology Electronics Panel in this set of hearings explores this issue in some detail.

[8] John Harter of USICA has suggested this approach.

CONCLUSION

This testimony is not intended as a particular criticism of this Congress or this Administration, each of which is laboring valiantly with the handicaps inherited from the last Administration and the last Congress. It is an attempt to stand back and give an assessment of where we are today, and to suggest that we cannot afford to move as slowly as we have in the past to a more formal examination and a more active pursuit of U.S. national economic interests.

This set of hearings is an important contribution toward the examination of the directions which U.S. policies should take, and how they should be formulated. While I am concerned that we should have undertaken the efforts described above several years ago, and it is very late to undertake them now, it will be later still if we delay making a beginning further. Thus, we must patch up existing differences, do as well as we can with existing mechanisms, proceed with existing domestic and international institutions and solve problems on an ad hoc basis until we can try some more comprehensive approaches.

But if we fail to make some fundamental determinations about where our interests lie and where the best interests of the trading world lie, and fail to take some early steps to move vigorously in those directions, the pressures for increasing government intervention here and abroad will build and beggar-thy-neighbor policies will proliferate.

Chairman GIBBONS. Mr. Wolff, you made a very profound statement there. I have been sitting here through almost 2 weeks of hearings now, better than 2 weeks of hearings, trying to figure out how we are going to turn this into affirmative action, because we have learned a lot.

I think one of the things we should have done, we should have put the private sector first, then brought the Government in second. It would have certainly sharpened the tune of the Government to have the challenges that you all have been pointing up here today.

On trade adjustment assistance, I recognize that there was a tremendous blow in 1979 for the multinational agreements.

I also look back to the late 1960's and early 1970's. Trade adjustment assistance hadn't worked at all prior to that time. I don't think we had ever had a successful case, or not any that I had ever seen. All of the time when we tried to adopt a trade adjustment assistance program we had the administration, whatever administration was in power, opposed to a trade adjustment program. They said we don't want it. It is burial insurance. Certainly we came up with a half-baked approach in which we put more emphasis on paying out, I guess, burial insurance than we did on rehabilitation insurance.

Go over for me again what you think ought to be the components of a decent trade adjustment assistance program.

Mr. WOLFF. It seems to me the emphasis ought to be on training and on trying to match individual skills to jobs, and facilitating the process of people finding those jobs.

In Germany, a worker can go into the Federal Government and indicate, even if his job is still in place, that he has a reasonable idea of how to better himself through retraining. They will give him, I think it is up to a year of training, and continue to give him a substantial portion of his former salary, The training is undertaken partially at the expense of the private sector and in private sector facilities, not Federal German Republic facilities.

In South Carolina there are cooperative programs between the firms that go into that State to invest, and State training facilities. The firms put the actual machinery that they will be using, and for which expertise is required, into State training facilities so people are trained for the jobs that will be created. There is a guaranteed job at the end of the program.

There is thus a lot that could be done that we are not doing now. As I mentioned, we could create a national jobs register in some form. In Germany there is one. It would seem to me we could afford to do something of that kind in the United States.

What we had instead was a program that worked against mobility. We unduly held out hope in Youngstown and some other areas that those plants would reopen when they weren't going to reopen. People held off making some tough decisions about retraining.

And in other instances we sent a check after the person had been rehired again. There are many faults. But I don't think that is a reason for doing away with the program. The philosophical argument against a trade adjustment program was argued through in 1962 as to whether the United States should have a generic program of trade adjustment assistance as opposed to assistance for all workers. The decision was made to go ahead with trade program.

If a person is put out of work because a highway was put through his plant and eminent domain took the plant, isn't that fellow as absolutely unemployed as a trade impact worker? Sure. That is only equitable, but priorities have to be set. We have a major interest in having an open trading system. And I think it deserves a separate policy and a separate program.

Chairman GIBBONS. You mentioned in your statement that you thought we ought to have a Department of International Trade. Probably few in this room could match your years of experience in Government and having seen the various Departments of Commerce, Agriculture, the Treasury, State, everybody pulling, trying to get a piece of the action. People moving between them. I didn't want to leave out Labor, they have been in the act, also.

People moving in and out of those departments into the little U.S. Trade Representative's Office, Executive Office of the President.

Do you think we can really pull together in this Government one Office of International Trade?

Mr. WOLFF. I think so. I think we are close to it now, in fact. We are down to two, pretty much.

Chairman GIBBONS. Agriculture has still got a big role.

Mr. WOLFF. Well, I wouldn't change that substantially at all. For agriculture, my attitude is "if it ain't broke, don't fix it."

USDA is doing a fairly good job of protecting U.S. interests in agriculture. I would think, however that there would be an interest in the agricultural community to have stronger representation abroad in negotiations.

I think a Secretary of Trade would help in that regard. And that agriculture's interest in policy would still be adequately protected in an interagency decisionmaking framework.

Currently there is a confusion and duplication of effort. We have our negotiating functions absolutely separate from, let's say, industrial sectoral analysis, to the extent there is any, or enforcement of unfair trade statutes.

Yet, it is really one problem. Should the locus of action shift from Commerce to USTR in steel, if instead of the dumping cases some broader approach were taken? That seems to me rather questionable.

Chairman **Gibbons**. Mr. Brodhead.

Mr. **Brodhead**. Thank you, Mr. Chairman.

Mr. Wolff, I was interested in what you had to say about the trade adjustment assistance program. Having seen the program operate in the area that I represent, it seemed like a program that, at least for a time, was well funded. In one year, I think that we literally spent a couple billion dollars on the program.

We were sending a lot of checks to people, in many cases, checks that they didn't need. There is a big problem now in trying to get back some of the money that these people got because, under their contract, those who are members of the United Auto Workers that had contracts with the big three may have the supplemental unemployment benefit program.

The combination of benefits, as you know, from the program is not supposed to exceed 90 percent of what their wages were.

In literally tens of thousands of cases it did. Of course, that money is gone and spent. Even though the workers owe the Federal Government the excess money they received, of course they can't collect it now.

We saw, as you point out, lots of cases where people were back to work before they ever got the benefit. Somebody would be laid off 6 weeks or 2 months, 5, 6 months even. By the time the benefit checks started going to them they had been called back to work, and a substantial portion of the money was wasted, I think.

But as you point out there really wasn't any money available for training. No matter how much we talked about it, what efforts we made, there really wasn't any available money for retraining.

I never could understand that because it seemed to me then and seems to me now a relatively simple problem to solve. That is, in Michigan, as well as across the country, we have lots of colleges and vocational training programs. We have private companies that are in the business of training people. We have all kinds of training institutes and so on.

Evidently there was money available. We never could make the matchup. We never could figure out how to spend money to pay for people, reimburse people for the expenses of training.

I never could understand why we couldn't do that. Do you have any ideas on how we could refashion the program in order to make it possible to have the kind of situation you describe in West Germany where, if someone were entitled to benefits from this program, it could be relatively quick and simple for that person to become enrolled in some sort of training program, and that the government would pick up all or a major portion of the expense involved?

Mr. **Wolff**. You know, I certainly don't have, by any means, all the answers. It seems to me that basically the private sector has to undertake the training, that we are talking about preparing people for jobs that have to exist.

Our companies do not see, as the German companies do, why it is in their interest to invest heavily in apprenticeship programs beyond anything they are reimbursed by goverment.

We have not seen this as an important role for companies in our country. Incentives will have to be provided to companies to promote national objectives in increasing employment and improving skill levels. I suspect that there are some ideas that some of the major companies would be able to give you on the subject.

Mr. **Brodhead**. Clearly, that sort of thing is needed. I guess what I was suggesting was something that was much simpler, that there are programs that exist to train people, you know, whether it is a public university or a private university or a community college or whatever, or some private company in the business of training people to be electronics technicians, or work on computers, or whatever.

The woods are full of these kinds of things. There are educational opportunities for people. Why is it that people couldn't just enroll themselves with the appropriate showing that they were import affected and that they had lost or were likely to lose their job? At least as a partial answer to this, why couldn't people just enroll in these sorts of programs and be compensated and the Government pick up the costs?

The benefits these people were getting in many cases were, in Michigan, $250-$300 a week, in that range. Now, in lots of cases this was the only thing between that family and starving.

I have no quarrel with that. In many cases there is another breadwinner in the home. In many cases, these benefits, the person didn't start to draw those benefits, as we have said, until he or she was already back at work.

In other cases they drew those benefits and they drew unemployment compensation and supplemental unemployment benefits and TRA all at the same time and actually had a substantial increase in income while they were not working.

So, the money was there. The money was spent. But I never could understand why we couldn't make tuition payments available, for example, to people, which would have been a lot cheaper and we wouldn't have to set up a program and bureaucracy.

Just go down to the local community college or XYZ company that trains people and enroll?

Mr. **Wolff**. I think it is clear that is the direction we have to head in. I think that what is happening instead is that for the first 9 months of this year, the Department of Labor has only certified 17,000 workers. Last year, the annual average has been around 200,000 a year.

I doubt if our trade problems are behind us, and the new criteria haven't gone into effect yet, the law hasn't changed. We still have problems from imports. We are certainly not heavily in surplus. Nevertheless, we are cutting out the existing program without putting any replacement into effect.

I think what we have to do is go exactly the direction that you are suggesting, and the adminstration is currently doing exactly the opposites.

Mr. **Brodhead**. Thank you, Mr. Chairman.

Chairman **Gibbons**. I appreciate your observations on GATT, too.

I want to review that statement of yours again and perhaps talk to you again about what we could do to invigorate GATT with some more substance.

I think we need to get on with a new negotiation. I hope to discuss with other members of this committee this week and with the USTR this week the GATT ministerial meeting and things of that sort coming up.

Thank you very much for coming.

Mr. Wolff. Thank you.

Chairman Gibbons. We appreciate your service.

Our next witness is also widely known in this country and in this committee and in the world for his expertise in international trade—Mr. Harald Malmgren, also a former Deputy U.S. Trade Representative.

Mr. Malmgren, we welcome you here. You may proceed as you wish.

STATEMENT OF HARALD B. MALMGREN, PRESIDENT, MALMGREN, INC.

Mr. Malmgren. Good morning, Mr. Chairman.

I have a short statement I prepared for the committee. Rather than read it, I would like to submit it and summarize it.

Chairman Gibbons. All right, sir, we will put it in the record following your statement.

Mr. Malmgren. What I have to say is that we have gone through two decades of evolutionary trade policy thinking which began with a focus on tariffs in the early 1960's. We spent some years working on those problems.

It took indeed about 5 years from the time that the Kennedy round was started to the time it was completed. Indeed, there was a year or so of preparatory work that led to those negotiations. No sooner had we completed the negotiations than in the summer of 1967 we had a number of congressional problems, a number of people, number of industry groups that felt they were in difficulty and had asked for special import protection.

At that time I was in the USTR office. I immediately started a team of people to work, moving around the capitals and going to Geneva to prepare for a ministerial meeting in November 1967.

That meeting launched the inventory of nontariff barriers and subsidies, numbering in the thousands. Everybody listed their complaints about everybody else.

We compiled all that. Over a period of 3 or 4 years they were consolidated, analyzed, categorized. A conclusion was gradually being reached by 1970–71 worldwide, in the industry groups, agricultural groups, labor groups, in most countries, that the way through that maze was to develop some codes of conduct, some principles.

We then tried to get the political will to negotiate going. That took until 1973, when we had a ministerial meeting. The reason I am going through this history is that by that time, 1973, it was already widely agreed, we had had already 6 or 7 years of international discussion before the ministerial. Even so, it took until, as you know, 1979 to weave our way through all these nontrade issues.

As soon as the MTM was completed, we had another series of very real problems raised that American business, labor, and agricultural circles perceived. You will hear about many of these in these hearings. They broadly cover agricultural policies, industrial policies, the internal policies of governments, the ways in which governments shape their own economies, sector by sector.

These policies, which affected many sectors, are seen as sources of unfair competition. So, in effect, what we have done is we have gradually shifted the focus, first from tariff to nontariff measures, now to internal policies of government.

That is a logical progression, but it gets into a very sensitive area of whether governments have the right to guide their own economies. Many governments will say yes, that is our right. That is something you cannot touch. It is a very difficult area we are coming to. It is logical that we progressed to this point, but very difficult to touch. It would touch, for example, U.S. internal policies as well.

Now we are at a point of asking ourselves: "What do we put on the agenda for the eighties?" I agree with Alan Wolff that we now have to start a new consensus building process internationally. We have a ministerial coming up. I don't want to list all the problems. It is pretty obvious to me there is already a consensus about the problems.

I would put them in six categories. I have listed them in my prepared testimony—the service issues, the industrial policy questions, the national technology policies, national agricultural policies, making the GATT system work more effectively and doing something about a discipline for import actions that are taken in cases of injury.

It is an ambitious agenda and covers very complex issues, but boiled down, any new rules in this area will limit the freedom of action of national governments.

That is what you have to reckon with. You will be saying to a government you cannot do something you have been doing in the past as a logical part of your own philosophy of government.

So, it is not so easy to start negotiations in that way. There are fundamental differences between governments as to what the national economic policy ought to be, frankly, and what the role of government should be.

The ministerial meeting coming up, in my view, given the history of my own experience in this area over two decades, is going to be the beginning of a very long process. It is not going to launch into a negotiation in year 1.

We are not going to see results in 1983. We are going to see results probably in 1990, if we hurry. I know that sounds like a long time, but these are very difficult issues.

Now, the problem, as I see it—and I agree with Alan Wolff on this, too—I do not, at the present time, see any consensus internationally or even domestically.

I have served on many industry committees. I am also adviser to the International Chamber of Commerce of Paris—not the American Chamber, but the International Chamber. So I am talking to industry groups in other countries pretty actively.

I would say there is no consensus about industrial policies, how to approach them—no consensus about technology policies, no understanding of the services issues, much less consensus about them.

So to start there has to be a good deal of not only government-to-government talks, but there have to be a lot of industry papers written about what should be done, what are the objectives, and what are the means.

I recall that in 1969, 1970, 1971 there were many, many papers issued in this country laying out what would a code look like on nontariff barriers, on subsidies, or on something else. What do we need to do about customs valuation? Long lists were developed by industry people, labor people. So there was a clear consensus eventually.

Right now, if you were to ask what is the view of the services industry about its problems and the means to rectify them, I think you would get little more than an attitude, "Let us free up the services flow."

Now let me just mention a couple of things that I think are important and go beyond these immediate considerations. The first factor that I think we are having to deal with is a slowdown of economic growth and capital formation that began in the late 1960's, and which is giving us a persistent long-term effect.

We should have been growing faster during this period, and instead we have been growing slower. We should have been investing faster to modernize. Instead, we have been slowing down on the capital formation side.

So, when global competition was intensifying, we were not adjusting. We were becoming more obsolete. So, we have had a failure to adjust.

In Western Europe the problem is probably much worse. It is my expectation that unemployment in Western Europe in the next 2 years will rise dramatically and then stay high for the rest of the decade. So, the Europeans are probably going to be even more sensitive than we are in basic industry.

That is not all. There is something that I think this committee and the other committees in Congress have to face that is coming on very fast. It is what I would call a shock which will dwarf all of these other effects. I think it is going to come in the next few years, within the decade, and will affect any trade policy we are talking about now; that is, the information revolution.

I think the introduction of, in a different way, computers and telecommunications in the next few years will transform the industrial workplace, the offices, and the services. I think the result of the transformation is going to be that we will have essentially very automated factories.

We have been talking about this for many years, but it is now possible because of computers and telecommunications. I think we already see it in, for example, the Japanese factories in the automotive area.

It is not labor cost in Japan that has much to do with the automotive situation at all. It is the fact that there are so many more robots being used that productivity is extremely high and quality control, frankly, of a robot is much better than a human being because the robot inspects its own work as it goes along and rejects it before anybody else gets to it. As some say, robots don't make Monday or Friday cars. They don't know what day of the week it is.

We are going to see these changes coming in all managing and manufacturing functions. Demand for industrial robots, of course, will grow, and of other automated equipment, but that will not generate new jobs because the robots are already making robots.

That is essentially the way you do it. The office workplace is going to change dramatically as well. People will be able to work in one place and the work transmitted to another place. People can stay at home and do bookkeeping, filing, typing. It is going to change very, very much what we see.

If you think this is far away, I assure you it is moving very quickly in industry. All you have to do is read current industry magazines week to week and you will see plenty of evidence in many, many businesses.

In the services, the same thing is happening. I have been doing a lot of work in banking and other financial services in the last 3 years. Most of that has been on strategic planning. Most of my work is on applications of technology to change the way services are provided so as to make more money with less activity, how to make global services available in a one-stop shopping mode by using computers and telecommunications.

Now that even includes services like engineering because it is now possible technologically to put an engineer or draftsman in one city working on a computer and talking to a machine located in another city without anybody between, not even a draftsman doing another drawing at the other end, no facsimile transmissions. You just talk to the machine through computers.

That is already underway and is something we are going to see much more of. Now, other governments have recognized for a long time that the transformation this brings about in about this time, the eighties and nineties, will be substantial, will be really revolutionary.

There are, for example, reports written in Japan and France, I think the committee staff can gather them for you. I think they are worth reading, frankly. The phenomenon is called different things in different places. The Japanese talk about knowledge intensive society; the French talk about informatization of the economy and about telematics, which is machine interactions through computers and telecommunications.

Other governments put a high priority on the areas because they think two things will happen. First, it will greatly increase productivity to move in this direction. Second, it will generate exports if this area is enhanced in an exploding world market which is expected to double and redouble again.

We shall soon see a transformation of the entire industrial and office structure. There is very heavy emphasis on technology policy in other countries.

The reason I have gone into that is that I was asked by the Department of Labor and USTR office about a year ago, a little less, with a colleague of mine to prepare a report on national technology policies—where do other governments see they are going, how do they influence technology and what does it mean for the United States.

We concluded that report about 4 weeks ago. It is being circulated widely in government. I believe it will go to all the ISAC's. It really was quite startling to go around talking to people running technology policies in various countries to see how far forward the thinking is going, how much further ahead, frankly, thinking is than in many of our businesses in the United States because many of our businesses have been thinking about cash flow, management, and short-term financial problems in a period of recession, inflation. Very few are thinking that far ahead. The GE's think ahead, but not so many others.

The other thing that is striking is that the pace of technological improvement in some countries, especially Japan, is really extremely fast. The level of R. & D. is high, but what we concluded also was that it was not so much government subsidies as it was coordination of effort in these countries, especially Japan, because Japan has the lowest level of official subsidies for R. & D. relative to gross domestic product for nondefense R. & D. than any country. In fact, the highest level of official aids to R. & D. is found in West Germany.

I will give you some examples of my conclusions after talking to the most sophisticated people, including the Bell Labs people, who are on the frontier, but others, too.

In the computer telecommunications interface, the heart of all of this change, in semiconductors, there is going to be a tremendous change in the structure of our industry. It will be a struggle to stay with Japan.

I think you can read very good articles on that in Fortune and Business Week in the last few weeks. Basically, of the present generation of 64 K RAM, more than two-thirds of the world market is already held by Japanese producers. In the next generation, which may or may not be 256 K RAM, the experts I talk to feel the Japanese will take a much higher share. You can count on IBM, Bell, and Hitachi, but not many others will have a chance to stay in.

In fiber optics right now there are three world leaders—Bell, Fujitsu, and Hitachi. Again, two Japanese; one United States. In long-wave lasers, frankly the Japanese are ahead. That is very innovative technology. That is Hitachi.

In computers, the speed in Japan of change and improvement is so fast that it is awesome. I believe the true competitor of IBM is Fujitsu and there is almost no other true competitor.

In some high technology areas companies are joining rather than fighting. We have seen many of our semiconductor companies building plants in Japan, but I am talking about new phenomena.

For example, GE and Hitachi are cooperating on a wide range of projects, robotics, and other things that make sense, between these two giants.

Unimation in the United States works closely with Kawasaki. We are going to see that the giant companies become even more gigantic.

The conclusion of the study, boiled down to the essence, is that governments are increasingly intervening in high technology. They are integrating national efforts. They are sometimes allowing companies to integrate more, encouraging that development; in fact, forcing companies to integrate more.

In other cases, they are coordinating research activities through committee meetings. For example, the Japanese method is to have the companies, research labs, universities and government sit together on any research project of importance and exchange views on those projects and coordinate the effort.

You are not supposed to go off in your corner by yourself and do something. You are supposed to do it from the perspective of national well-being. Everybody benefits by lifting the level of national competitiveness. Once you make a product, then you compete.

But the technology part is not considered the area to compete in. Let's all get together and build a new system. When subsidies are used in most of these countries, they are not used for basic research but for commercial applications.

That is rather startling. We would not tend to think of using taxpayer money to help somebody make a profit. In other countries they say that is the only logical place to put government funds because they are not so big. You have to put them where they will pay off. Quite often, there is no patent right retained by the government, just go ahead and use it. That does tend to stimulate progress in the marketplace.

There is a view that by coordinating everybody's activity this is procompetitive. It helps the economy. We would view such cooperation as anticompetitive in our competition or antitrust policy.

We have reached even that point, if I may observe, that the two premier technological competitors of the United States, the two companies that are in the lead in their fields and staying there so far—IBM and the Bell System—are being looked at with a view to dismantlement.

In those specific areas, other countries are trying to create as big companies or bigger, more integrated. They are trying to emulate basically the scale of the Bell System and IBM. It is precisely those two companies we are in public policy trying to dismantle at this time.

So, it is a little bit of an ironic situation. Everybody is trying to get bigger and we are not. There may be merit to it, but I am not sure what it is because the real competitors of those companies are external, not in the United States.

We also found in technology policy there has consistently been and continues to be an effort by most governments to shield their home markets in that area while they build a base, then target external markets to make a bigger base.

There is a reason for scale; that is, you have got to have enough scale to finance the continuing research. The problem of financing is critical. There are various measures used, and besides subsidies of course there are trade policies, procurement policies, those types of performance requirements which I believe Mr. Wolff and others have talked to you about.

I don't want to go into all of that right now. The issue of what to do about such policies is really intricate because what you are basically going to have to say to a country like Mexico, we don't want you to force companies to bring technology to you. We don't want you to force companies to create a certain level of jobs in the country. We don't want you to force companies, when they locate in your country, to export at any particular level.

I think some of these governments are going to say, "You mean you want us to stay down on the farm, you don't want us to develop. We are not going to do that." So, it is going to be very delicate to try to figure out some way to bring discipline to this field.

Now, in my view, besides getting ourselves a consensus about where we are going from here in trade policy, it seems we also really have to take a fundamental look at our own institutional framework for technology development.

If we don't move up the ladder as we liberalize the world market, we are not going to be making much progress in terms of rearranging our economy. We will not be competitive unless we keep moving along.

That has been our strength in the past, but one conclusion of our study, similar to conclusions in other reports I have been involved with, is that long leadtime high-risk research in complex areas of technology in the United States simply can't be financed on a substantial scale unless it is by the Government in the defense area else it is done or on the basis of retained earnings and internally generated cash flow.

There is no capital market for long leadtime high-risk research. It is just not available. It has to be done internally or by the Government. It is a pervasive problem in our economy. There are no big R. & D. projects in the marketplace.

Now, even when corporations can, from their internally generated cash flow, do considerable research, many corporations even then are reluctant to commit funds because the leadtime and risk just doesn't make it very attractive.

It is a market failure. People can't see far enough ahead and are not about to deal with it. Our management culture and our SEC regulatory policies help create that kind of problem because they force everyone to focus on short-term financial results. What did you do last quarter? That is how you reward managers and assess companies and protect stockholders, in a sense, but you don't really, because you are forcing everyone to forget the future and take care of now.

So, we have a capital market problem. It is related to our tax policy. It is this committee's business really that I am talking about.

Now, another factor is that our industry and Government do deal with each other on an adversary basis. We are unique in that aspect of the way we go about this. Virtually every other government treats government-industry relations as a cooperative arrangement.

Even in Germany. In Germany, R. & D. is closely coordinated by the government. Companies would not dream of doing their own research without checking it out with the government and other companies and exchanging information through the research institutes.

Even in that free market economy, in that particular area there is a lot of interaction. We have to face that market factor. How do you replace that with something else uniquely American? We discourage cooperation among firms. We treat it as anticompetitive.

We don't like exchange of technology among firms. Only lately the antitrust division lifted restrictions on the auto companies of exchanging their information on pollution or emission control. You can look at this in many different ways, but it is a problem.

Everybody else is doing it the opposite way. You have a different orientation which is also, as I mentioned, oriented toward commercial applications. How do we take something in R. & D. and move it into the market. Other governments focus on that.

If we have a focus on research, it is on the basic side, but it is very limited there, in NASA-related research or else in the defense area. It is more specifically oriented toward weapon systems.

Now there is, in other words, a difference institutionally and in our capital markets, the way technology development functions in our system. We need to address that because we need an American approach to compensate for the difference; something that encourages R. & D., which as you know is slipping in this country.

It is falling every year as a share of GNP when it should be rising to deal with this coming information revolution that I have talked about. We need an international consensus, but we need a consensus at home as well about how to gear our economy.

I am calling this to your attention because it is not exactly trade policy. Yet, it is.

When I have come to look at these technology issues now, I have begun to worry quite a bit that we are facing a challenge. On the one hand it is an opportunity for the country to really move back into a high growth mode and rearrange itself

But it is also a challenge of another kind. If we don't deal with it, we are going to have awesome adjustment complications. What we are going to find anyway is reduction in demand for industrial jobs.

We are going to have a lot of people out of industry. Demand for auto workers will fall very sharply by the end of the decade because of automation. We are going to have to find some other place for everybody to go.

The economy has to be more resilient. Trade policy will be very protectionist in that kind of climate unless something else is happening.

So, it is all becoming one piece. We are now an economy that is interacting with the world economy. Our competitors are out there, not just here.

Thank you.

[The prepared statement follows:]

STATEMENT OF HARALD B. MALMGREN

I am honored that you have asked me to appear before this Committee to present my personal views on some of the trade policy problems that our nation faces.

There has been in the U.S. over the last two decades or so a substantial evolution of thinking about trade policy. At the beginning of the 1960's, the United States sought to promote expanded world trade through across-the-board reductions in tariffs. This objective was given special impetus by a growing concern that the creation of the European Common Market, while fulfulling a longstanding U.S. desire for greater unification of Western Europe, nonetheless threatened to increase tariff discrimination and other impediments to American exports.

In 1962, the Kennedy Round trade negotiations, focused almost entirely on tariffs, were launched, and they were subsequently completed in May 1967. This represented, in other words, a 5-year effort.

As soon as the Kennedy Round was over, business, labor, and farm spokesmen argued in the following months that another form of protection, nontariff barriers (NTB's), as well as various types of subsidies to industry and agriculture, were becoming the critical problems. In the autumn of 1967, I led a U.S. team which prepared the outlines of a new GATT Work Program, which was then approved at a GATT Ministerial meeting in November of that year. That Work Program launched the massive inventory of NTBs and subsidies. The GATT work gradually evolved from a focus on the thousands of complaints of various nations to a focus on general principles of conduct, or potential codes. By 1973, when I was responsible for the drafting of an international declaration to be made by Ministers, to launch formally a new global round of trade negotiations, there was already in existence a consensus among the Western industrialized countries about what to do. It was by then generally recognized that codes of conduct would have to be worked out for NTBs and subsidies, and the basic principles of such codes were generally recognized. In spite of this early consensus, the subsequent Multilateral Trade Negotiations did not conclude until the spring of 1979. The total effort on NTBs and trade subsidies took, in other words, 12 years.

Not long after the MTN negotiations were completed, new perceptions began to develop in American business, labor, and agricultural circles about the "real" impediments and sources of distortion in world trade. For example, industrial policies of other nations to assist key industries, such as steel, and to promote technological development and job creation, in vital sectors such as the automotive, aerospace, computer, and telecommunications industries, were said to be new and growing sources of unfair competition.

Thus there has been a gradual shift in our focus over twenty years, from tariffs to NTBs to the industrial intervention policies of governments.

Now the U.S. Government is preparing for a Ministerial Meeting of the GATT in November, 1982, and the question is once again before us of what to put on the agenda for the next phase of international negotiation and multilateral cooperation in commercial affairs.

Various witnesses appearing in these hearings will no doubt have their own lists of priorities. I do not want to bore you with repetition of a long list of issues that others will no doubt present. It seems to me that there is already some national consensus that certain broad objectives should be pursued:

(1) Harmonization and liberalization of national policies affecting services.

(2) Bringing national industrial policies into conformity with the GATT and other international agreements and undertakings.

(3) Developing a framework for international cooperation, or a code of conduct, for national technology policies.

(4) Bringing national agricultural policies under greater international discipline within the GATT framework.

(5) Making the GATT system, and its NTB codes, work more effectively.

(6) Devising a better, internationally agreed, framework under which national actions are taken to limit imports, in cases of serious injury.

This is an ambitious agenda. It covers very complex issues, and in particular it reaches into the domestic economic policies that sovereign governments carry out. Concrete action in some of these areas would invariably limit the freedom of action of governments to pursue their own industrial and agricultural policies, and to enhance their national technological capabilities, and to strengthen their growing services sectors. International discussions on these issues touch on fundamental differences in national economic philosophy, and on the role government is expected to play in each nation. Many governments will resist international intrusions into such vital areas. Some developing nations may perceive this approach as an effort to prevent them from attaining economic independence and from developing internationally competitive industries.

The experience of the last two decades, and especially the lesson we have learned that comprehensive international agreements on trade issues take several years to develop, suggest that the Ministerial Meeting next year should best be perceived as a beginning of a very long and arduous process. Nothing can be achieved without some form of consensus internationally. I do not yet see such an international consensus in any of these problem areas. Rather, I sense in my own conversations abroad that there is great reluctance to yield sovereign rights and freedom of action in shaping the direction of industrial and agricultural change, and in improving national technological capabilities. There is also considerable suspicion of American motivations and objectives in the services sectors.

On the other hand, although the United States does not now have wide support in other nations for its objectives, the alternative of unilateral U.S. actions across a wide spectrum of our trade is not a realistic alternative. This would risk a collapse of the present system of rules, and of rights and obligations, without substituting any new international disciplines. The United States no longer has the leverage it once had when it was the uncontested economic and trade leader among the Western free market economies. Now the European Common Market is the largest trading entity. Now, the technological capabilities of Japan constitute a challenge to some of our most fundamental industries, especially those on which we hope to pin our future development. We are far from helpless, but we do not have the kind of dominant power and influence that we had in the 1940's and early 1950's.

Addressing these problem areas would pose significant challenges at any time. However, right now, at the beginning of the 1980's, the economic and technological outlook makes such objectives seem formidable.

First, we face continuation of the global slowdown of economic growth and capital formation that began in the late 1960's. Since that time there have been many global shocks—in energy prices, emergence of new competitors in Eastern Europe and LDCs, volatile exchange rate movements, changes in national capabilities in high technology, etc. At a time when we should have been growing faster, and investing faster to rearrange our economy and adapt it to the new realities, we instead slowed down. Our capital stock and our industries were not modernized fast enough, and obsolescence spread rapidly—just when global competition was intensifying. Not surprisingly, we now find imports taking a growing share of some of our key domestic markets, and we find that our share of world exports of industrial products is declining.

But our nation is not alone in this failure to adjust. Much of Western Europe may even be worse off. It is my expectation that unemployment in Western Europe will continue to rise for another year or two, to levels not seen since the Great Depression, and then stay high in some countries for the remainder of this decade. This by itself will pose very painful choices for Europe, because unemployment will drain budgets and force the cutting of many other economic programs.

There is another shock coming which I believe will pose even more fundamental questions about the role of labor in our economy, and that of Europe. We are on the verge of an Information Revolution, which will have far-reaching effects on our job structure, our competitiveness, and even our social framework. The accelerating development of the computer-telecommunications interface, and its interaction with "factory of the future," "office of the future," and the growing services sector, will radically alter the structure and pattern of ecomonic activity in our nation, and indeed in all of the industrialized nations.

The emerging role of industrial robots, numerical controlled machine tools, and automated transfer equipment will change the nature of how factories function. They will require far less labor, for one thing. The demand for automotive workers, for example, will fall dramatically in this decade—regardless of imports. The interconnection of computers, telecommunications, and the industrial workplace will allow completely new ways of managing and manufacturing (for example, engineers are already enabled to instruct the actions of robots or machine tools through computers, bypassing the traditional functions of draftsmen). Although the demand for industrial robots will grow dramatically, their manufacture will not necessarily generate many new jobs. Some of the new plants for producing robots are designed to use robots to produce robots.

Similarly, the office workplace will be significantly rearranged by the linkage of computers and telecommunications to office work sites. We can already see the tremendous change being brought about by word processers and computerized filing, accounting, asset management, and other administrative activities. Moreover, the work station site will not have to be in the same place as the responsible office—people can work at home, or make decisions in one city which are put into effect in another city virtually simultaneously.

In the services, an area in which I have been working recently on strategic planning for U.S. and foreign businesses, there is a growing recognition that a wide variety of services can be integrated through the computer-telecommunications interface. Users of services increasingly desire one-stop shopping. Providers of services find that technology is making this possible, without moving people around the world.

Japanese Government and industry have for a number of years recognized that this information revolution was coming, and they have been preparing for it since the initial government-industry efforts to promote computer technology in the 1960's. It is described in various government documents as the drive for a knowledge-intensive society. In France, there have been two major reports prepared for the President of France in the last three years on the "informatisation" of the economy. The French reports also visualize this as being brought about through the computer-telecommunications interface, which they have called "telematics" (the interaction of computers and communications).

A high priority has been accorded to this broad sector by a number of governments, in the expectation that progress in this field will (1) greatly increase national productivity and (2) generate new exports to an exploding world market. Moving to higher technology exports is widely recognized as a necessary response to the emergence of some of the Newly Industrializing Countries (NIC's) in more traditional industries (textiles, steel, shipbuilding, etc.).

The information revolution brings with it good news and bad news. The good news is that it can help lift productivity. The bad news is that it will bring about a major decline in industrial jobs. There will be an increase in job opportunities in services and technology development, but our workforce is not easily adaptable to transformation of jobs on the scale required in the 1980's. Moreover, we are not training enough engineers and technicians to meet the coming demand—Japan already graduates each year more engineers than the United States, on the basis of a population half the size.

We will soon have to consider what our policy should be regarding the development of human resources. How our economic policies deal with people and jobs will greatly affect the performance of our economy, and of our competitiveness.

The challenge posed for the United States is, in my opinion, so serious that if we do not find a way to meet it our technology and industrial competitiveness will be seriously undermined. Moreover, the rate at which change somes in each sector is faster and faster. In the critical area of the computer-telecommunications interface there has already been a remarkable erosin of the U.S. position. For example, in a key area of American innovation, semiconductors, two-thirds to three-quarters of the 64 K RAM world market is going to Japanese firms. Only a few American firms, apart from the Bell System and IBM, may survive in that market. The next generation, whether 256 K RAM or some other form of technology, will probably involve a competitive race of very few giants: IBM, Bell, Fujitsu, Hitachi, and NEC. Some of the independent U.S. producers are being bought up by larger firms, and this may help them through the storm ahead; but in my opinion few of the firms which remain independent can survive the next 5 years. In fiber optics, the world leaders are the Bell, System, Fujitsu, and Hitachi. In long wave lasers, the Japanese (Hitachi) seem to have the competitive edge. In computers, the phenomenal rate of progress in Japan is grudgingly recognized in the United States, but it is nonetheless real.

In some high technology areas where the U.S. and Japan run neck and neck in the race for leadership, such as industrial robots and other "factory of the future" equipment, key U.S. companies have formed joint ventures with Japanese firms (GE-Hitachi; Unimation-Kawasaki) rather than compete head on. This is one way of meeting the competitive challenge.

I have just completed, in cooperation with Dr. Jack Baranson, a major study of technology policies of other nations and their implications for the United States. This study was commissioned by the U.S. Department of Labor and the Office of the U.S. Trade Representative. It is entitled "Technology and Trade Policy: Issues and An Agenda for Action."

I reached certain broad conclusions in that study which I should like to call to your attention.

First, it is evident that many governments, including governments of some developing countries, consider technological development to be vital to domestic and international competitiveness.

Second, governments are actively intervening in high technology to coordinate and integrate the national effort. This is carried out in a variety of ways. In Japan, MITI, the industrial enterprises, research laboratories, and universities meet frequently to exchange information and develop a collective perspective on promising avenues of research and their applications. Subsidies and soft loans are provided to assist development of commercial applications in targetted technologies. However, the level of official support of R&D in Japan is, as a percent of GNP, far lower than any other industrialized country. It is not the amount of the subsidies but the coordination of effort and collective decision-making that seems to have the primary effect. The view is that this integration avoids redundancy and duplication; it provides for division of labor; it assures exchange of information on what does not work as what does; it facilitates parallel development of technologies that reinforce one another. From a competition policy point of view, this coordination of national effort is viewed as procompetitive, by lifting the level of national capability. We tend to discourage cooperation and coordinated effort, viewing it as anticompetitive.

Indeed, if I may comment further on this point, we have even reached that stage in public policy thinking that our two premier technological competitors, IBM and the Bell System, both world leaders, have become subject of government efforts to fractionate their activities, despite their outstanding performance by any measure. While the other governments are trying to emulate the integrated structure of the Bell System, we are trying to dismantle it.

Third, governments have in many cases shielded their home markets from import competition in the high technology area, while targetting external markets, especially the United States, for development of exports.

Fourth, a wide variety of other measures or instruments are used to enhance national capabilities. These often are embodied in trade policies, procurement policies, and "performance requirements" established for foreign firms which make direct investments and manufacture locally. Such requirements often involve commitments as to the share of exports in total shipments, the local job content, the local value added, the use of local suppliers, the training of local workers and supplier firms, the transfer of technology, etc. If the requirements are met the foreign firm is allowed to invest and operate locally, and benefit from tax incentives, subsidies, and other aids provided such new plants.

The issue of what to do about such performance requirements thus covers not only trade, job, and investment flows, but also technology flows, in developing countries and also in some developed countries.

In this connection, I would like to call to your attention the substantial role of "offset" arrangements in the international defense procurement sector in bringing about comparable results. The effects of "offsets" are often spread widely in the economies of Western Europe, well beyond the defense sector. My report raises the question of whether such arrangements should continue to be negotiated by the U.S. Defense Department on behalf of U.S. industry, with only limited regard to U.S. commercial objectives, or whether this area should not be brought under the wider trade and economic policy framework of the U.S. Government.

What should be done?

It is important to develop an international action agenda for the 1980's.

However, in my opinion we need to have a new look at our own policies and institutional framework first. Our R&D, on which our future competitiveness depends, is declining as a share of GNP. Long lead time, high risk research in complex areas of technology cannot be financed on a substantial scale except by the government, or on the basis of the retained earnings and internally generated cash flow of large corporations. Even in the latter case, most corporations are reluctant to commit funds and manpower to long lead time, high risk projects.

There are many reasons for this market failure. Our management culture, our assessment of performance of managers, and our SEC regulatory policies all force a focus on short-term financial results. Our capital markets do not provide medium and long-term funds for major R&D efforts. Our industry and government deal with each other on an adversary basis. We discourage cooperation among firms, exchange of technology among them, and coordinated R&D efforts. In other countries, the R&D area is looked at separate from product and price competition. Enhancement of national R&D is felt to raise the level of a nation's competitiveness. Therefore, in other nations some degree of government-industry cooperation and sharing of technology and other information among firms is felt to improve the overall capability of the nation. If additional funding is needed in some high technology areas the other governments will often intervene, if this will help bring the R&D to the stage of successful commercial application. We would normally view the use of government funds to support commercial applications as wrong.

In other words, there is an emerging pattern in other countries, particularly in those of our key competitors, of close government-industry cooperation and coordination, and active policy measures, to promote technological capabilities. This creates a basic difference between the way we and they handle the development of technology.

That is a growing challenge.

To negotiate internationally about these industrial and technological policy issues will be difficult. Similarly, to negotiate a better more liberal framework of international rules for services will be difficult. An intensive effort to develop some kind of consensus is needed, to provide the vital foundation on which any international negotiation must be built. That consensus must include a consensus at home about our objectives, and the means for achieving them. But we also need some degree of consensus internationally, about the nature of possible new trade rules or codes of conduct.

A very high degree of consensus existed about the treatment of NTBs before the MTN formally began in 1973. A comparable consensus about the treatment of industrial policies, technology policies, performance requirements, and services does not exist now.

The first priority is to build such consensus, at home and abroad, and I hope hearings such as these will help us, as a nation, to develop one.

Chairman GIBBONS. An extremely fascinating statement, Mr. Malmgren. Let me relate to you a little personal experience. This committee went to Asia this summer. I found that the Asian businessman, particularly in Japan, was anxious to get his story across to the committee, anxious to show his workplace, his factory, his research centers, an attitude that is not as discernible in this country. There was no distrust of government, even foreign government, that I find between our own industry and our own Government. The mutual distrust, I must say.

And I came back in a state of renaissance. I have come to the conclusion that unless America, the United States gets its act together, the future for us is going to be very difficult. It is a very deep problem. It is a cultural problem as well as a political problem, something we are going to have to deal with.

While we deal with tax policy in our area, trade policy in our area, we only deal very tangentially with antitrust policy, competitive policy. I believe that we need to look at those. One of the things I observe about Japan is that they have a better capital accumulation system than we do. One, their people save a lot more than we do. And two, once they save it, they get it working for them better than we do. And on projects that seem to have a greater national significance than ours. It may all be imagination, but I came away with that conclusion.

I have visited Japan a number of times in my life, but I never had the experience I have had this time. That makes your statement very attractive to me. I learned firsthand—I am sorry I didn't know it before—that Unimate was a principal source of robotization in the world, and it was a Connecticut company that came to life in Kawasaki. It wasn't until my return that I got a letter from the Unimate people asking me to come look at their facilities. I also learned it is now Kawasaki Boeing. You know, I guess Boeing went to Kawasaki because they could get the best deal there. I look at the 767 as a plane on which the Americans put the wheels and the tail assembly, and everybody else is going to build all the in betweens. We will put the name on, like Zenith does.

But those things are happening. The American businessman accepts it. Its Government is almost ignorant of it, even hostile to it. Yet, it is happening all around us, and rapidly. I don't think we are really tuned up for it. What in your opinion is the basic problem of America in all of this?

Mr. MALMGREN. We have had a crisis of confidence in the last decade and a half. Everybody's time horizons have become really short range. Let me get through this year, with the financial problems I have got. We must deal with inflation. Strategic planning has shortened up quite a bit. Industries think at maximum about their current difficulties, a year out, 2 years out. There is a little planning for later but not enough.

I was just reading a very fine article on G.E. in a British newspaper a couple of days ago. Even G.E., which is very much a high technology company, only reorganized itself to make technology the central framework for management scanning of things to look at within the next few years. But they began to see if they didn't look at it that way, the competitive changes that were going on around the world would overrun them in many fields. And they are in many fields. That is a company that has everything from Utah Mining all the way through to lasers, ceramics, nuclear power. It is a very wide-ranging company.

This focus on the near term in our economy must be altered. The tax laws are written that way. Everything is written that way. Regulatory policy. Everybody thinks in terms of the next tax return and quarterly report for the stockholders.

We have got to somehow find a way to get the economy to measure performance in terms of long-term viability. Will the company do well over a long period, even if in the near term it is not doing too well? That is the real question. How well will an automaker do in the next model year is not as important as whether it can survive in 1985 if everybody else is fully automated by that time; everybody else being Japanese. That is a tough question. That is what you have to measure in the automotive industry.

Can a company generate and spend enough on capital over 5 years to compete with what the situation will be at that time? We have to get ourselves thinking that way. We have to look at the new technologies as a way of measuring whether we stay in, or go out. In my experience in trade policy in Government over the years, when people came in complaining about imports it was because they were blind sided by something they hadn't planned for. Something out there had happened. A new product or new competitor which should have been foreseen.

I thought back a long time, why didn't companies see this? Well, they just weren't looking, but often it was very obvious. In public hearings we don't ask companies "Why didn't you see it?" which would force managers to think about it once in a while. When we give import relief we don't say what are you going to do with it? We would like to watch over this. Since we are giving you something, what are you giving us? We want the assurance you are going to make some changes. That would force management to think ahead a little bit and explain what it is doing. I am not in favor of government managing anything in the private economy, but if the government is asked to intervene, then government can at least force the companies to look long term.

What are you going to do with the help you get? And explain it. Because that really would change the orientation. We have to really start thinking about radically changing the structure of our economy. That requires a long-term prespective. I will give you another example that goes beyond the computer interface.

In looking at this, I have asked many people at the frontiers of technology, many institutions around the world, government, private, what other new things are coming that should be very easy to see at this time and would impact on industry? For example, I heard two things that apply to the steel industry. One is the development of ceramics, which is going so fast now that in the automotive industry in Japan and in the technology labs of Europe it is believed there will be very little steel in a car by 1990, not even the engine. The engine will be ceramic. Ceramic engines are being run on blocks now in Japan, day in, day out, to test how long they last.

It will be a time before they are put in cars. But think of that. It is already very late. In the structural underpinnings of an automobile. The German Government believes, carbon fiber technology will develop far enough so that the structural elements of the chassis will be made of carbon fiber. That is how fast things are going, by 1990 or sooner. So what happens to steel? Autos represent a big chunk of steel demand, 20, 25 percent. That kind of thing is now foreseeable. You have to either find a cheaper way to make steel to beat the alternatives or else you have got to get out of the steel business. It is a very tricky question. That kind of thinking should be part of the public debate about moderation of imports. Import restraint in steel is a logical approach to take given heavy government intervention in other countries. But what are you going to do with the intervention?

Are you just going to do the same thing over and over again, or radically change what you are doing to meet what will happen later. We must force ourselves to look ahead.

Chairman GIBBONS. It is very difficult. I find it difficult in my personal life as well as my congressional life to look ahead. I don't feel I am much of an expert to give anybody any advice on it. But obviously we have to do it.

Mr. MALMGREN. We have to do it to survive. If everybody else is going to be doing it, we can't just sit there. We have to start moving now. We had the benefit of many years of powerful economy with a lot of fat in it. We could live off the fat when we got a little sloppy. Now we are getting a little leaner. We will get very lean indeed if we don't get moving.

Chairman GIBBONS. While I was in Japan I saw a Panasonic television set that, if they had had it in this country, would sell like hotcakes. You could go into a football stadium and sell them like hamburgers. They may cost $75 or $100 apiece, but you could sell them all over the stadium.

People like to look at the game in front of them, see it also on television so they can get the replays or tune in on some game in another part of the country. A television set about the size of a half a carton of cigarettes. Didn't weigh more than that. Perfectly viewable, picks up more channels than you can get on a big commercial set. I don't know why they are not selling them in this country. We have probably got some kind of trade barrier, or they haven't got enough of them made so that they can really hit the market. But they are not being advertised on television if any are available here. I have just never seen them. I imagine we have got that coming down the road, maybe for next Christmas.

Mr. MALMGREN. Probably.

Chairman GIBBONS. It is there. I don't see us doing anything like that.

Mr. MALMGREN. Well, the United States is making tremendous strides in certain fields. As I said, it is generally in the big integrated companies because that is where you can get the financing for basic research. We are making tremendous progress in telecommunications and computers. We are still maintaining a lead. But it is being done by the very big companies.

Nobody else can really do that kind of work. We can start up a new semiconductor company on some new technological trick. But then to stay in that market day in, day out, and get the scale required, that is very hard to do. The entire semiconductor industry, for example, is being basically integrated by being bought out by larger companies. The little ones simply wouldn't survive, frankly.

Chairman GIBBONS. Mr. Vander Jagt.

Mr. VANDER JAGT. I would like to thank you, Mr. Malmgren, for a very interesting statement.

Mr. MALMGREN. Thank you.

Chairman GIBBONS. Thank you, sir.

Our next witness will be our last one for the morning. Then we will go at 2 o'clock to the Steel Caucus and remaining witnesses.

Our next witness is Dr. Penelope Hartland-Thunberg, chief economist for the Center for Strategic and International Studies, Georgetown University.

Dr. Hartland-Thunberg, we welcome you here. You may proceed as you wish.

STATEMENT OF PENELOPE HARTLAND-THUNBERG, CHIEF ECONOMIST, THE CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, GEORGETOWN UNIVERSITY

Ms. HARTLAND-THUNBERG. Thank you, Mr. Chairman. I have prepared a statement which I have submitted. I would like, however, to summarize it.

Chairman GIBBONS. Certainly. That will be perfectly acceptable and we will put your entire statement in the record following your summarization.

Ms. HARTLAND-THUNBERG. Thank you.

As it happens, I can save a great deal of time by summarizing because I can build very easily on what Mr. Malmgren has just said. I didn't realize he had been working on the subject of high-technology industries as I have been but in a different context.

Chairman GIBBONS. You know, that is the trouble in America; we just don't know what each other is doing.

Ms. HARTLAND-THUNBERG. Even in the same city.

Chairman GIBBONS. Even in the same city.

Ms. HARTLAND-THUNBERG. Let me describe briefly how I happened to have come into this. I have just completed a study on which I have been working about a year on the subject of Government support for exports. I therefore welcome the opportunity to summarize my findings in this study before this committee, and plan to concentrate my remarks on the export side of the trading question entirely. I came into this study because it seemed to me that there was a great deal of emotional argument going on on the subject of Government support for exports, and specifically subsidies for exports, but not a great deal of soundly based logic. I thought somebody should look at this whole subject in a sensible fashion.

I must confess, Mr. Chairman, that I sometimes think that economists have done too good a job in selling to themselves and to others the virtues of a free trade policy. It is quite true that under most conditions the best answer to a trade policy question is a free trade policy, but not under every condition. And the world is changing rapidly, as Mr. Malmgren so eloquently pointed out. We must reexamine the kinds of policies in the trade field that best serve our national interests today.

Subsidies often produce a reflex action. Subsidies are almost indecent in the view of many of us; they pamper inefficiency, they dilute productivity, and they are something to be avoided. In general that, it seems to me, is a correct conclusion. But it doesn't apply to every case. When we look at the role of experts in the U.S. economy over the whole postwar period, what we see is that our export industries are those industries which we have identified as our growth industries; indeed, our high technology industries. They are the industries based in research and development, turning out new products, new ways of doing things, new services that create new markets that weren't there before, both at home and, importantly, abroad. The whole history of international trade and the United States role in it, postwar, is one of new industries springing up in the United States, producing first for the domestic market, then for export; these industries eventually being copied, replicated abroad, with the product being reduced in cost, sold to larger and larger groups of consumers, and being followed in the repeating product cycle by yet new products and new services generated, largely but not always in this country, sold first in the American market, then in foreign markets.

The most recent manifestation of this product cycle has brought exciting new products to the fore, and the impact of these products on technology you heard very eloquently described by Mr. Malmgren immediately before me. The process goes on. It goes on even more rapidly. I think, however, he was quite incorrect in saying this isn't really part of American trade policy. On the contrary, it is a very important part of American trade policy because of the export side of our high-technology industries.

Our export industries are our high-technolgy industries, our growth industries. Our industries of medium growth are industries of medium technologies. Industries of low growth or stagnant growth are industries of stagnant technology. Interestingly, it is the second two cases which are import-competing industries. Dynamic industries, industries of high technology, never appear before the U.S. International Trade Commission seeking protection in the domestic market. They are the ones against whom similar cases are brought abroad. They are our export industries and our strong industries in the sense that they are the industries in which, in world markets, we have a comparative advantage.

Comparative advantage simply means we are more efficient in producing the goods and services turned out by these industries than by other industries. It means, importantly, that the productivity of our labor, capital, and management used in these industries is higher than in industries of slow growth or stagnant industries.

Now, this is all an important matter of trade policy because, in recent years, as Mr. Malmgren indicated, other industrial countries, Europe and Japan, trapped by balance-of-payments deficits and rising unemployment, have sought to solve their own domestic problems by expanding exports. And they have looked around the world, have noticed the growth industries in this country which have been selling successfully their products in the markets of Europe and Japan, and decided to attempt to solve their own domestic economic problems by subsidizing directly or indirectly the establishment there--in Europe and Japan—of replications of our growth industries, and then subsidizing directly or indirectly exports of the products of those industries in competition with our high-technology exports.

These are sovereign countries. They have every right to subsidize these industries if they want. Why should we worry about it? Why does it affect our trade policy? It affects not only our trade policy, but our whole domestic economy, just because these are our most efficient industries, just because these are our industries of high productivity.

If the exports from these industries, the aerospace industries, the computer industries, and, very importantly, the service industries like industrial engineering, computer software, and such—if our exports from these industries are foreshortened by the fact that foreign governments are intervening in the world market, this means that there are conditions prevailing where the free-trade prescription for trade policy no longer applies. Free trade, economists will tell you over and over again, is the best policy in the national interest, provided world markets are characterized by a large amount of free competition, no government exports in the form of subsidies or curtailment of foreign imports. When another government subsidizes its exports competing with our growth industries, it is interfering in the world market mechanism, foreshortening the stream of our own exports, and thereby causing a diversion of our labor and capital away from our growth industries into our industries of lower efficiency. In an era when we are greatly concerned about low-level productivity and declining productivity in our economy, causes of further decline brought about from outside the country are worrisome.

What can the United States do about sovereign countries causing a diversion of American labor and capital out of high-productivity industries into industries of lower productivity? The best solution is to try to talk our trading partners out of subsidies.

As you are quite aware, we have wheedled, cajoled, we have threatened, we have tried for the last 5 years at least to induce our trading partners to eliminate the most vicious form of subsidies to exports in competition with our high-technology exports; that is, subsidies to export finance, subsidies to interest payments on export credits. We have made very little progress in this. Elimination of subsidies would be the best solution, in the interest of everyone.

Barring that, the second-best solution would be matching these subsidies given by foreign governments, not in competition with all of our exports, but only to those exports which are in competition with our high-technology exports, and the areas in which we have a strong comparative advantage.

Now important, it seems to me, in U.S. trade policy is a decision on the part of the Congress of the United States about the prime mission of the Export-Import Bank of the United States, whether the Export-Import Bank is to be required by the Congress to be self-supporting as its prime mission, or whether its prime mission is to be that which is already mandated, to meet foreign competition. The bank can't do both things in an age of high interest rates, heavily subsidized abroad.

To meet competition, it is going to lose money, because foreign rates are greatly below foreign market rates and our own market rates of interest. If the bank is not to lose money, it wouldn't be able to meet foreign competition. The General Accounting Office in a recent report has pointed out this inconsistency in the two goals of the bank, and it seems to me that before the bank can resolve its own internal problems, the Congress has to give an expression of its opinion as to where prime interest lies.

Beyond that, it seems to me that what is terribly important in this country is an awakening of the public and the private sector, both, to the importance of exports to our national well-being.

Mr. Malmgren points out the way in which technology is developing, the increasing intensity of competition in high-technology areas from Europe and Japan. This is not just a matter of exports, it is a matter of exports and the structure of the domestic economy and the productivity of the domestic economy. And until exports are appreciated as having a significant impact on the productivity of the domestic economy, we will never be successful in a reinvigoration of our economy in the maximum sense.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF PENELOPE HARTLAND-THUNBERG, SENIOR FELLOW, ECONOMIC RESEARCH, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, GEORGETOWN UNIVERSITY

In all the world, only in the United States is it necessary to justify exports; in every other country the importance of exports is self-evident and generally accepted. In every other country exports are accorded top priority in national policy; in fashioning domestic economic policy the first concern is its impact on exports. In administering foreign policy the first concern of foreign service officer abroad, from the country's Ambassador on down, is the furtherance of exports. Foreign aid programs are generally more popular abroad (or less unpopular) because they are perceived as an instrument of export expansion. Geo-political and defense strategy is pressed with an eye always cocked toward export markets.

The contrast with the United States could hardly be greater. Not only are exports in the United States not accorded priority in domestic or foreign policy, they are actually perceived as subordinate to domestic production in importance. Exports are clearly perceived as expendable whenever export restraint is used as an instrument of foreign policy or is the inevitable consequence of national policy—as was evidenced with increasing frequency during the past decade or so.[1] Nothing is more revealing of the warped U.S. perception than the allegation by U.S. government officials that "exports add no more to GNP than production for domestic consumption."[2] In every other country such a statement would evoke a gasp of incredulity from the majority of the electorate. In the United States it went unchallenged. Similarly, the failure of the Reagan Administration's budget proposals to differentiate between those affecting domestic production and those affecting exports reflects the same inattention to priorities. Despite an expressed goal of reinvigorating the U.S. economy, a failure to recognize the role of foreign trade in influencing the structure of the domestic economy, and the contribution of foreign trade to the productivity of U.S. capital, labor, and management will condemn these efforts, if not to failure, to less than maximum effectiveness.

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[1] Robert A. Flammang, "U.S. Programs that Impede U.S. Export Competitiveness; the Regulatory Environment, "Georgetown University's Center for Strategic and International Studies, (Washington, D.C., 1980): P. Hartland-Thunberg, "The Political and strategic Importance of Exports," Georgetown University's Center for Strategic and International Studies, (Washington, D.C., 1979); Simon Serfaty, "The U.S., Western Europe, and Third World: Allies and Adversaries," Georgetown University's Center for Strategic and International Studies, (Washington, D.C., 1980).

[2] It is gratifying to note that officials of the Treasury Department have dropped this pseudohomily from their recent Congressional testimony, in contrast to their utterances in these halls earlier in the year.

There are, fortunately, signs that these faulted perceptions are changing, in the legislative branch more so than in the executive branch. The formation of an Export Caucus and an Export Task Force in the Senate and House of Representatives bespeaks an awaking awareness of the importance of exports to U.S. national security as well as to U.S. economic health and vitality. Hopefully, the new awareness will spread quickly.

The reasons for the importance of exports have been recognized by economists since the days of Adam Smith. More recently political scientists and international affairs specialists have come to recognize the political and strategic importance of exports to a country's national security. The far greater awareness of the economic importance of exports which exists elsewhere is traceable to the limited size of national markets and the importance in a number of industries of economies of scale. To achieve the economies resulting from long production runs, sales outside the limited domestic market are necessary. Similar limitations do not exist in comparable U.S. industries.

The economic benefits of exports are not confined to those which are the consequence of large-scale production, however. Exports of those goods and services which are highly valued by consumers around the world and which can be produced by one country, say the United States, more efficiently than it produces other goods, tend to raise the nation's productivity. In freely competitive world markets, exporting the products in which the country is most efficient (whether from large-scale industries or small), and importing the goods in which it is less efficient will cause its labor, capital, and mangement to be used most productively. Any diversion of resources from the more efficient to the less efficient uses will lower national productivity. These productivity benefits exist independently of economies of larger production runs. This point is especially relevant for the U.S. economy where the high productivity of many of its service sectors implies large productivity benefits from the exports of such service items as data communication, computer software and industrial engineering.

The productivity benefits are not the only advantages of exports. A strong performance enhances the influence and prestige of the nation in all international dealings, causing its diplomats to be listened to seriously, its political and geopolitical initiatives to be more effective and generally giving the country more clout in the world arena. The prime examples of such enhanced international influence stemming from exports, of course, are Germany and Japan. A strong export performance enhances the country's national security position in the world in part because its is accompanied by a strong foreign exchange position for its currency. The symbol of a strong currency carries with it a degree of power and influence in the rest of the world which is only poorly recognized in the United States. This power and influence extends to political and military affairs as well as economic.

In the United States we identify our most efficient industries as our "growth industries." They are high growth industries because consumers at home and abroad value their products highly and demand them in expanding volume. Because of this country's size and its history of support for research and development, the most efficient industries in the United States (on a world scale) are those which are technologically most advanced. These have produced new products, services, or methods which have found a ready and expanding market here and abroad. Because of their high growth, output per unit of input (i.e., per unit of labor, capital, and management) has been high. This ratio is the economic manifestation of efficiency.

The very success of the growth industries in the United States has caused them to be copied abroad. Such replication world follow, eventually, in the normal course of the product cycle in a world of free competitive markets without government intervention. In fact, however, would markets have been so highly competitive and expanding exports have been so important to Europe and Japan since 1973 (because of unemployment at home and the mushrooming of their oil import bill) that other governments have intervened with direct and indirect subsidies. As a result the replication abroad of U.S. growth industries has caused U.S. exports to be less than they would have been without foreign government intervention. Such a foreshortening of the flow of U.S. exports has been accompanied by a diversion of U.S. labor and capital away from the more efficient growth industries into the less efficient, less productive domestic industries.

To avoid the depressing effect on U.S. productivity which is the result of foreign government interference in the market mechanism, the best solution for the United States would be an elimination of the foreign government interference. Such a move is not within the control of the United States, and all of economic history suggests that a policy of government support for exports in some form will never be totally abandoned by U.S. competitors. A prudent course of action for the United States, admittedly second-best, requires recognition of such facts of global economic life.

The second-best solution is a policy of counter-subsidies by the United States, which would match the export subsidies provided by foreign govrnments to their replication of industries in which the U.S. has a clear comparative advantage. Such counter-subsidies would neutralize the distorting effects on U.S. resource allocation of foreign government intervention in the world market mechanism. Both prudence and equity would require that such a program be conceived for the long-term and be flexible, capable of fluctuating with the level of foreign subsidies.

A program combining U.S. government support for R. & D. and for export finance could be effectively fashioned for such flexibility. Much of the institutional foundation for such a program is already in place. Government support for basic research in general and in such areas as defense and public health is in the national interest. Although such support does not benefit exports directly, eventual adaptations in the civilian private sector have the potential of giving a strong boost to exports in the future. Subsidies to R. & D., which are justifiable quite apart from what foreign competitors may be doing, can serve as a safety net to counter low-level foreign subsidies to competing industries abroad. For those periods when foreign subsidies rise precipitously, as they recently have, additional support should be available to neutralize their more seriously distorting effects.

Such additional subsidies could take the form of further support for R.& D. or for export finance. Especially for periods such as the present, when foreign subsidies to export credits are grossly distorting the world market mechanism, is such a form of government support appropriate. Subsidies to export finance require that the U.S. Congress decide whether the Export-Import Bank of the United States is to be a self-supporting institution or one which meets foreign competition. In periods of heavy foreign subsidies to export finance, the Bank cannot do both. Then a decision not to meet foreign competition is in fact a decision to reduce he productivity of U.S. labor and capital.

It is important to be clear about what the government should not attempt to do in support for exports. The government should attempt to work with the market mechanism, not contrary to it. This implies arrangements only to counter the market-distorting policies of other sovereign governments and not go beyond such neutralizing acts. It means policies aimed at achieving a composition and volume of exports as close as possible to that which would have in fact occurred had not foreign governments undertaken market-distorting policies. It is in part a reactive policy, not an active one. But only in part.

Government policy toward R. & D. and exports should be active in the limited sense of providing a total environment favorable to such activity. In the case of exports this means government policies which recognize the importance of exports to national productivity and structural growth and means therefore that any reindustrialization program must involve the establishment of priorities for reindustrialization among U.S. industries on the basis of their comparative advantage in the world market-place. In the case of R. & D. activity which the private sector by itself is likely to ignore—basic research and national security-oriented R. & D. Government support for exports and for R. & D. does not mean a determination by the U.S. government of which industries are to be the growth industries of the future. It means rather encouraging the market mechanism to greater alacrity in making that determination. In the case of export finance it means mandating the EXIM Bank to meet foreign competition as its first and primary goal or mission, with the goal of being self-supporting only secondary. Finally, government policy requires an enduring consensus between the public and private sectors concerning the importance of exports and an institutional basis for constructing and supporting such a consensus.

In a period when the productivity of the U.S. economy is already depressed seriously by the adverse shift in its terms of trade resulting from unprecedented oil prices, it is important that productivity not be further injured by structural maladjustments induced by the sovereign acts of foreign governments. Such injurious effects can be neutralized by a program of counter-subsidies. They can also be countered by a vibrant R. & D. performance which generates a continuing stream of commercially significant innovations. Successful R. & D. activity implies a sustained world demand for the exports of the country, an internationally strong currency and enhanced power and prestige in the international arena.

Chairman GIBBONS. Thank you. You know, I think there is a real misunderstanding about the role of exports. I find even people engaged in export manufacturing don't realize they are engaged in export manufacturing. Much of the citrus crop grown in my area is grown for export. The people that are growing it and selling it don't even realize they are engaged in exports.

I have the seventh largest port in the United States. Most of it is export. Most of the people working around the port don't even know they are exporting. It is lack of perception of that role, and the impact it has upon our economy, that is, I think, one of our basic problems.

Ms. **Hartland-Thunberg**. I think the situation is even more acute away from the coast, Mr. Chairman. So many, especially manufacturers in the middle of the country, know that they are selling their product, which is an input to another product, to a domestic manufacturer.

They aren't concerned with exports. They think their market is totally domestic. However, if they examined the pattern of sales of the company to whom they are selling, in many cases they would find 50 percent of the market of the company to whom they are selling is abroad. And a decline in their customer's exports would have a very serious impact on them. Unfortunately, this is too little known.

Chairman **Gibbons**. And I am sure that in the area of organized labor, many of the jobs, and I hope the best jobs, are directly related to international industry, but you never hear that reflected in the position of the AFL-CIO. Well, we have an education job to do. I hope we can get it done before we make some terrible blunders.

I think we ought to recess now until 2 o'clock and we will begin then with the Steel Caucus. I thank you very much, Doctor, for being with us here today and helping us with this problem.

[Whereupon, at 12:40 p.m., the subcommittee recessed, to reconvene at 2 p.m.]

AFTERNOON SESSION

Chairman **Gibbons**. We will commence the afternoon session. We welcome you two gentlemen from the Steel caucus. I try to keep up with your activities as best I can to know what is on your mind. I welcome the opportunity to hear from you.

I know that you are the chairman of the caucus, Mr. Gaydos, so do you want to lead off?

STATEMENT OF HON. JOSEPH M. GAYDOS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. **Gaydos**. I want to thank the chairman for these hearings. I want to be emphatic, Mr. Chairman, in stating that the caucus hopes the information it makes available to the chair and the committee generally is constructive and affirmative, as distinguished from one blowing their own horn or going off half-cocked in an area that is so controversial.

Thank you very much for your patience.

Chairman GIBBONS. You and your caucus do a very fine job. I follow you. I am not teasing you or anything. I do follow your activities.

Mr. GAYDOS. Coming from the chairman, I consider that a real compliment.

Mr. Chairman and members of the committee, just 2 days ago Bethlehem Steel announced the layoff of 5,000 steelworkers.

For the past 3 months, apparently dumped foreign steel imports have captured an average of almost 25 percent of the market in the United States.

About 60,000 steelworkers have been laid off in this assault and another 20,000 are on short workweeks.

These things are the direct result of U.S. trade policy, and of actions among those of our trading partners who choose to ignore their solemn international trade agreements and to make trade war with subsidies and barriers.

So I think it is especially timely that you, Mr. Chairman, are undertaking oversight hearings on U.S. trade policy, and what it should be as we reach for the 21st century.

Whatever this policy is to be, it should be as different from today's in attitude as it is possible to make it.

Trade policy for today—and for the yesterdays within memory—is a disaster and is based on the naive belief everybody plays by the same principles we do.

It does nothing to recognize the differences within economies, and the differing measures of government participation and sponsorship within them.

It exposes our weakest points directly to the strongest subsidized assaults of those among our partners who practice free trade more like warriors than businessmen. It invites the assault.

And it asks Americans—including Americans whose jobs are being exported—to carry heavy loads and take half portions so that our trading partners may have whole portions and carry lighter loads.

It is an abomination.

But it need not be that way through the 1980's, or even through the international trade talks that are coming up.

The Steel Caucus on November 19 and again on December 9 and December 10 held special orders on steel imports, and these remarks touched on trade as it is practiced by our partners as well as on the assault on steel.

I would like to incorporate the whole of these special orders as part of the testimony of the Congressional Steel Caucus, and I will submit them in writing as they appeared in the Congressional Record.

Chairman GIBBONS. Certainly, and it is so ordered.

[The information follows:]

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THE NEW STEEL WAR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. GAYDOS) is recognized for 60 minutes.

(Mr. GAYDOS asked and was given permission to revise and extend his remarks and include extraneous matter.)

Mr. GAYDOS. Mr. Speaker, at this time, let me establish for the record the fact that the Steel Caucus, having been in existence now for 5 years, and consisting of approximately 150 Members from the House side, once again appears today in this special order pursuant to the established policy of the Steel Caucus to activate ourselves as a caucus in every matter that directly or indirectly affects steel domestically or internationally. That is the framework in which we have made numerous appearances before many committees of the House as well as public appearances. It is the basis of our formal organization and has done much in the area of steel and its problems, and on this, I think the record will speak for itself.

Mr. Speaker, foreign producers of steel sold in the United States last August an amount of steel that equaled 25 percent of our domestic consumption, and this week the American companies that are being bled by this situation were warned that they could start a trade war if they assert rights guaranteed by the General Agreement on Tariffs and Trade, rights held and exercised by every participating country, and by U.S. law.

This warning did not come from a pure-thinking editorial writer or a think-tank or a consumer group in conjunction with the epithet protectionist.

It came from members of the administration charged with seeing that our trading partners adhere to the agreements they have made not to engage in unfair trade.

Basically, our producers complain they are being mugged by a gang.

The police want to discourage the muggers by arresting a couple of pickpockets working the crowd of onlookers.

The victims tell the police that official help is not necessary. They say they will go to court and swear out a warrant on their own.

And the police response is, we will repeal the antimugging law if you do. We want to keep these muggers happy.

Meanwhile, some in the crowd—maybe some of the police—want the punishment to go to the victims.

That, Mr. Speaker, is the nontechnical explanation of the trigger price mechanism which was designed to expedite the provisions that GATT and U.S. law make for remedy when harm is caused to any participating nation by dumping or subsidized trade.

Requests for official action—for unstated reasons, probably of foreign policy—drew little response until just this afternoon.

The Commerce Department today initiated cases against Canadian and Spanish firms and monitoring in four categories involving steel imported from the United Kingdom and Spain.

Meanwhile, at least one major U.S. producer is planning independent legal action to remedy the effect of steel sold here at less than the cost of production and of steel that is subsidized.

The summer-fall surge—no; call it a flood, because it has reached the highest levels ever—of dumped and subsidized steel is the second crisis in recent years. Something like it also happened in the late 1960's and the mid-1970's.

Obviously, we have found not way to deal with the problem.

Just as war is planned physical violence to achieve a goal, these periodic surges appear to be planned economic violence to achieve a goal.

Because we are the world's biggest, most open, and richest market for anything, it is a situation we face every time the free world's steel markets turn seriously sluggish.

It is too late to warn of trade war.

I think we already have it.

I think we already have it, whether our leaders from administration to administration are willing to recognize it or not.

We certainly have casualties and casualty lists.

Kaiser Steel this month quit the production of steel and will eliminate 3,000 workers in California, for example.

It is common these days to read of layoffs of 300 or 400 and short workweeks for thousands.

In this first crisis of the 1980's, we have 52,000 steelworkers out of work and 17,000 on short workweeks.

The Department of Justice keeps and publicizes a crime clock that shows there is one murder every 23 minutes in the United States.

Maybe the Department of Commerce or the Special Trade Representative's Office should have to keep an import clock.

It would show 1 steelworker out of work every 9 minutes of every day of 1981, Sundays and holidays included. 160 a day, through today.

Imports from the European Community are up 55 percent and imports from Canada are up 41 percent. Imports from Japan are down 2.7 percent.

Whatever the case, a painful but unavoidable result of free trade or the continuation of a trade war, the field is prepared for a domestic battle royal.

The earliest casualty could be the hoped-for industrial and economic recovery this Congress has just finished moving heaven and Earth to conceive—the Tax Code and the Federal budget.

We face a big problem—a basic problem—in steel.

And it is part of a bigger problem.

It is a problem of politics and political forces—ours and those of our trading partners—and of Government policies and goals, ours and theirs.

The Congressional Steel Caucus is not holding these special orders to accuse anyone and is not ready at this point to propose a solution. Our purpose is to bring notice of the crisis to the Congress and begin a discussion that this time will be more than one automatic word processor spouting theology and epithets at another.

On issues of great importance, America's great policy debates in the press and among the politicians and the people are filled with the kind of knowledge that C. Northcote Parkinson saw as responsible for much muddling in the world.

Mr. Parkinson said, "The chief obstacle to progress is not ignorance but knowledge, and just such knowledge as medieval physicians had of medicine.

"They were stuffed with information," he said. "They knew all there was to know about the unicorn and dragon; the importance of the horoscope and the peculiarities of the salamander. They had piles of books.

"But," he continued, "medical progress dates from the moment the physician stopped looking at books and started looking at the patient."

I propose a look at the patient—this time.

The United States, more than any nation in the world, tends to follow trade policies based on the classic theories set forth by Adam Smith in the "Wealth of Nations" and David Riccardo in "The Principle of Comparative Advantage."

Canada is one of our trading partners and, truly, a very good neighbor in some respects.

We are in a joint natural gas pipeline venture with the Canadians. They are to build half. We are to build half. The agreement stated that it would be built in each country on mutually competitive terms, which meant steel producers from each country would have a shot at the business.

But the Canadian Government rigged the specifications on a major part of their work. They chose to use a pipe size only Canadian producers make.

U.S. producers make pipe that could have been used in what remained of the Canadian share. But the Government refused to lower its 15 percent duty on that kind of pipe. Our duty on Canadian pipe of that size is 2.2 percent.

Canadian steel accounted for about 16 percent of our imports in 1980, and reached almost 2.4 million tons, the equivalent of more than 10,000 steelworking jobs here, in the recent surge.

Isn't it strange? The Canadian steel industry is the only one to maintain growth in the worldwide decline in steel demand.

Fordham University's respected steel economist, Father William Hogan, has just published a study of the world steel industry in the 1980's.

Father Hogan says of Canada, "The future looks bright, given its management policies and a continued state of understanding with its Government."

The Government does large and small things to foster and protect.

We misunderstood the Canadians.

We thought the pipeline deal meant competition between producers.

They knew it was a competition between the Canadian Government and private American producers.

The caucus may propose a Buy-American resolution to cover the remaining work in Alaska if current assurances begin to look shaky.

The Canadians won that one and win countless little ones by using tariff and nontariff barriers against us—classic techniques that would be called trade war and protectionist if attempted by the United States.

This Nation has tried to practice free trade as outlined by Smith—in the late 1700's—and Riccardo—in the early 1800's—since 1945. We have practiced and practiced and we have not got it right yet.

Our negotiators have not mastered the idea that you get something when you give something. They have only mastered the giving part.

While two great men wrote on economics and trade during that intellectually fertile time, nobody wrote on trade war. However, Gen. Carl Von Clausewitz wrote extensively on the principles of real war and points of his work also are held to be valid today.

One frequently quoted Clausewitz maxim is that "war is merely the continuation of politics by another means."

The general also said, "war is a conflict of human interests; trade also is a conflict of human interests."

I will return in a short while to the general and the similarities between real war and trade war and free trade as it is practiced.

The entry on international trade in one highly respected standard reference work says the most warlike, predatory kind of trade is mercantilism.

In practicing this, governments use policies to encourage exports and discourage imports and the mercantile nations grow fat on the surplus.

Mr. Speaker, does this sound like any nation with which we trade? Or does it sound like all of them?

The entry goes on to say that regardless of what the comparative advantage theory may say about the virtues of unrestricted international trade, all nations interfere with international exchanges to some degree. They use tariffs, quotas, standards, subsidized exports, restriction of capital export, and restriction of foreign investment.

These are practices designed to compel one party to submit to the interests of the other.

General Clausewitz summarizes by saying, "War is an act of force to compel our enemy to do our will."

The foundation of our current trade policy was laid following World War II.

We were whole—the rest of the free world was not.

We had to trade or face the return of a depressed economy. We had nobody to trade with because our potential partners were exhausted or defeated, or both.

So we helped them rebuild and we traded; and we winked at and maybe even encouraged a well-meant trade barrier here and there.

After all, the United States was—and still is for that matter—the largest and most open market in the world, and we all knew that to get a little you've got to give a little.

Thus, we encouraged them to build state-of-the-act industries and plants with which we grew less and less able to compete as our plants and industries aged.

That is true, but it does not go far enough.

The Japanese looked out on the world and decided they needed a steel industry to be an industrial nation.

And they built with Government, industry, labor, and the banks all pulling together. They built with debt amounting to over 80 percent of capital investment, which could not be done in a nation working on the practices that evolved from Adam Smith's theories.

They built much more capacity than they could have reasonably needed. They grew from a 5-million-ton capacity to one of about 140 million tons.

Steel imports into Japan were never never allowed to reach three-tenths of 1 percent during the growth years.

Routinely, since 1976, the United States has taken about 20 percent of Japan's direct steel exports, which can be demonstrated by matching Father Hogan's estimates of total Japanese exports against the American Iron and Steel Institute's yearly reports on Japanese steel coming here.

Father Hogan reports that an estimated 50 percent of Japanese steel production finds its way into foreign markets.

He notes that:

> The large seacoast plants with large blast furnaces were constructed to establish Japan in the export market and never could have been justified on the basis of Japan's domestic demand.
>
> Having constructed this capacity, the industry must export in order to survive.

Add Japanese-made automobiles to our steel imports and the figure goes up. At the voluntary restraint level of 1.7 million automobiles, we have a loss in American steel production of about 1.5 million tons based on the average weight of U.S.-made cars in 1980.

By the way, the Japanese made 500,000 cars in 1960. Last year, they made about 10 million. The United States took around 2 million.

Again, they targeted collective resources for maximum effect.

The general put it this way: Produce relative superiority at a decisive point by skillful use of what you have, concentrate force, and attack the sum at any of the parts that are vulnerable.

Meanwhile, Chrysler Corp. Chairman Lee Iacocca can complain with proof that a Japanese-made car selling for $8,000 in Japan sells for $600 less in this country on the basis of a Japanese export incentive.

And Chairman Iacocca noted, we allow it to happen in the name of free trade.

He could have mentioned, but did not, the high duties on American cars going into Japan and the required modifications and the endless haggling and processing.

American automobile men tell me that a compact car that would sell here for $6,500 will sell in Japan for $12,000 to $13,000.

Meanwhile, the Europeans have almost their own trade sub-war going on inside the EEC.

With the EEC, you can almost see cause and effect.

Things get bad for steel in Europe; exports into the U.S. market rise.

Conditions have been bad for steel in general and particularly in Europe where steel is more a matter of domestic social policy than trade or economics.

German producers are not subsidized and they are ready to begin the same kinds of actions in Europe under their GATT rights that American producers are being scolded for considering. The Germans estimate that their subsidized trading partners in an 8-year period ending in 1983 will have received government support totaling $30 billion. Steel executives in the United States estimate that in the last crisis the losses of subsidized European companies totaled $15 billion, yet the losers remain in business.

As National Steel Chairman William Delancey recently noted:

> The fact that they are still in existence, still exporting steel, indicates the basic difference between their economic system and ours.

No one company, no matter how modern, can beat that kind of government competition.

Meanwhile, a member of the European Community's Parliament Committee on External Economic Affairs was quoted, in a recent edition of Dun's Business Month, on the subject of free trade.

"Let us have no silly or extreme talk of free trade for the sake of free trade," said Michael Welsh. "Let us see what we have to do for our own industry."

A few years ago, Wolfgang Jensen, the former president of a foreign-owned, U.S.-based steel company was quoted in a speech by an American executive.

Jensen was quoted as saying:

> Foreign governments target basic steel industries. Mills will be kept running regardless of cost, priced to sell even at a loss.

Mr. Speaker, I want to draw on only one more outside authority on free trade before I redirect my comments to the steel situation.

This authority is Paul Lyet, who is chairman of the Sperry Corp. and Chairman of the President's Export Council.

Well-versed in trade by the successful practice of it, Mr. Lyet held a press conference on the subject last summer before his appointment, and some of his remarks were reprinted in the Financer magazine.

Free international trade is largely a myth, said Mr. Lyet.

There is a great need to reduce foreign barriers to U.S. exports, he went on.

The United States needs an aggressive export strategy, he added.

It should recognize that other nations promote favorable trade balances through very active policies that range from simple subsidies to complex financing, he said.

And they are masters of the hidden barrier technique, he warned.

Smith and Riocardo, were they alive today, would be dismayed to see how confused things have become.

But General Clausewits would merely reissue his warning against "making the sword we bear blunter and blunter by degreees from feelings of humanity until someone once again steps in with a sword that is sharper and hews away the arms from our body."

Mr. Lyet put it this way:

> We have to enforce U.S. and GATT laws against unfair and disruptive imports.
>
> I find myself in sympathy with those who feel we must protect the core industries.

But the core industry of steel wants only what the free trade laws and agreements recognize is proper—a truce in the trade war.

If the TPM dispute cannot be settled, the caucus may well recommend and support recreating it through legislation.

If a trigger price based on the most efficient Japanese producer can be circumvented, perhaps the situation calls for one based on the most efficient producer in each country with which we trade for country-by-country application.

Questions about the viability of any steel industry and about protectionism and trade war will be raised as the current trigger price controversy comes to a head.

One group raising such questions will be "The Consumers for World Trade." Its representatives appear on trade matters before the appropriate Government agencies and the Congress to represent the interest of the consumer and wide open trade.

That, like the Japanese economic miracle, is true as far as it goes, but it does not go far enough.

The major portion of financing for consumers for world trade comes from corporate contributions. American corporations engaged in export and import and U.S. affiliates of foreign corporations engaged in automobile and other import activities.

The group will frankly acknowledge this if asked, but it makes no attempt to disclose the connection in its newsletter, which does list officers and directors heavily slanted to consumer consultants, professors, and former diplomats.

Consumer President Doreen Brown notes that no foreign corporations are contributors and that corporate givers do not set policy. They are not members. They are only supporters.

They obviously share common interests, she acknowledges, because "you don't give your money to people who don't share your interests."

The consumer group has about 3,000 individual members. Many of them are employees of the corporations that support the group.

President Brown sits as the consumer representative on the International Steel Advisory Committee of the U.S. Trade Representative.

I do not suggest anything is wrong in the arrangement by mentioning these previously unknown connections. I raise them only as useful background for weighing points in committee and on the floor.

Trade is important and upright exporters and importers are economic heroes in my philosophy, and nobody wants to do anything to harm them. We all realize that you win some and you lose some.

My concern is that we quit losing as a matter of policy.

For example, employment in steel production has fallen by about 24 percent between 1958 and 1980—102,000 jobs gone.

Since the crisis of the late 1970's, 8 companies have closed at 20 locations with a loss of 32,000 jobs. The United Steelworkers note this is only a partial listing.

We have tried voluntary restraints. They worked but other developments pushed them into history.

We have tried specialty quotas. They didn't last.

We have tried the trigger price mechanism one way. It broke under pressure.

We now have an adjusted trigger price mechanism that is under stress.

Why did these measures fail?

United States Steel Chairman David Roderick testified to the caucus that—

> Europeans and others have staged a massive assault on this market, and they have decided they will ship dumped or subsidized steel in complete disregard of the TPM.
>
> The very people who wanted the TPM so as to avoid being found guilty of dumping now completely disregard it—have clearly demonstrated they are unwilling to abide by the TPM and apparently view it as an administrative procedure they will respect or ignore as they see fit.

Three major questions are left for discussion in this early exploration of steel.

Do we need a steel industry?

The short answer is, emphatically, yes. The longer answer is that a Nation with the responsibilities of the United States cannot survive as a colony that ships only agricultural goods and raw materials, importing the basics, or by specializing in watches and chocolates.

We have got to hang in with a fully diversified economy—heavy industry, diversified manufacturing, agriculture, service, high technology, whatever it takes.

Steel, literally, holds the modern world together and supports it and moves it.

This is the only industrialized nation that cannot, absent some imports, meet full steel demand on present capacity.

Clearly there could be difficulty answering the demands of the planned defense buildup.

And a mobilization surge would find us with serious weakness.

Yet we are the political and economic mainstay of the free world.

This alone is reason enough to modernize and make more efficient the fundamental industry.

Additionally, the Nation will have to give attention fairly soon to a crumbling infrastructure, rebuilidng things that require steel.

On top of that, there is the problem of how foreign suppliers treat U.S. customers in times of high demand, which would be aggravated by deeper erosion of domestic capacity.

General Clausewitz advises that in considering how someone will act in the future, you have to be familiar with their past. He said, "The will is never a wholly unknown quantity; what it has been today, it will be tomorrow."

During the steel boom of the early 1970's, some foreign suppliers jacked up prices on longtime U.S. customers by more than $100 a ton above domestic prices—demanded and got premiums of 40 percent and more.

Dependency, particularly planned dependency, on possibly capricious foreign suppliers for something as basic as steel is as foolish as seeking no break in dependency on a foreign cartel for petroleum.

Why hasn't Big Steel done something to help itself? How did it get so behind the times and unproductive?

American steelworkers are highly efficient. Producing a ton of steel in the United States requires 7.7 man-hours, according to the most recent statistics available. The Japanese do it in 7.3 The Germans require 9.4 man-hours, the French 11.9, and the British 13.5.

Those bad efficiency figures for the Europeans are part of the dumping controversy.

But the need is to become more efficient by installing technology developed in America, such as the continuous caster, and plans are to spend $5.5 billion modernizing if profitability can be established and capital raised.

But dumping prohibits profitability, the lack of which drives away capital.

Mr. Roderick told the Steel Caucus:

> The whole effort to revitalize and modernize the domestic steel industry—those improvements already announced and those planned—is in grave jeopardy.

Why has steel not worried about modernizing before now?

It has, but it could not because it has been whipsawed by episodes of Government intimidation and foreign dumping in times of steel recession.

They could not take capital-attracting profit in good times because of one Government regulation or another, or the limited capital available was diverted to environmental protection rather than production. In slow times, times of heavy dumping, there was little profit to be found.

No profit, no capital, no investment in productivity. The present dumping cycle threatens to impose the same straitjacket at the most promising time for steel in the last 20 years.

And that is why it is important to take a good look at the patient rather than those unicorns and dragons I mentioned earlier.

As General Clausewitz said:

> The greatest and most decisive act a statesman performs is that he correctly understand the kind of war that involves him—of not taking it for or wishing to make it something it cannot be.

● **Mr. NOWAK.** Mr. Speaker, once again the executive committee of the Congressional Steel Caucus comes to the floor of the House to draw attention to and seek remedial action on a serious problem confronting our Nation's steel producers.

Indeed the problem—the invasion of our domestic market by predatory, unfairly priced foreign imports—is a serious one. In this case, the numbers speak for themselves.

In the first 9 months of this year, steel imports totaled 14,493,000 tons, an increase of 24.6 percent over the 11,636,000 tons imported during the first three quarters of 1980.

As the American Iron and Steel Institute noted:

> If present trends continue, the market penetration of imported steel will set a new record for 1981. Imports took an estimated 20.5 percent of the market in September.

Even during booming economic times in this country, those statistics would be alarming. Adding severity to the current flood of steel imports, however, are the debilitating effects of the current recession and high interest rates our Nation is confronting.

This, of course, translates into reduced demand and reduced production in the steel and auto industries. This translates into shrunken payrolls across the Nation, with thousands of workers in these two vital industries either laid off indefinitely or on reduced work schedules.

That has been the experience in the 37th Congressional District of New York, which I am privileged to represent. The current crisis exacerbates what has been a long-term downward trend in steel employment in my district. In the late fifties, for example, employment at Bethlehem Steel's Lackawanna, N.Y., complex avearaged 19,500. Last month, that payroll was about 7,200.

Similar shrinkage has occurred at Republic Steel's facility in South Buffalo where employment dipped from a historic high of 3,600 in the fifties to the current 1,650 level.

Imports have been a major culprit in this decline of employment in this major industry in western New York, an industry that is an important element in maintaining the health of our local economy. The current surge of imports and unemployment, thus, adds to the very genuine concern of the remaining workers at these Buffalo area steel-making facilities as to their long-term employment and the very future of these plants.

European steel producers have been the major source of the increase in imports this year. Certainly one thing we hope to accomplish here today is to signal our European allies that we in the Congress are deeply concerned about the current crisis and want these apparent violations of fair trade principles to stop.

As the following editorial from the November 11, 1980, edition of the Buffalo Evening News pointed out—and I would like it inserted at this point in the RECORD—in addition to exporting steel to this country, in effect the European Economic Community is also exporting its unemployment to this side of the Atlantic.

[From the Buffalo Evening News, Nov. 10, 1981]

STEEL DUMPING IS UNFAIR

As it did last year, the American steel industry is clamoring for action against unfair competition from foreign steel, and this time the government is giving strong backing. Commerce Secretary Malcolm Baldridge has filed a complaint against several European and other foreign governments, charging unfair subsidization of steel exports.

Last year's anti-dumping complaint by the United States Steel Corp. was withdrawn after the Carter administration reinstated the trigger-price system, which is supposed to set a floor price for steel imports. But much imported steel still seems to escape the trigger system.

Steel imports were up 25 percent in the first nine months of this year and now gobble up a quarter of the market.

The steel complaint is expected, after lengthy hearing and adjudication, to result in the imposition of countervailing duties to end unfair advantage of the foreign steel. U.S. trade officials are concerned that the move may result in European retaliation against American exports, but the United States is strictly within its rights to insist that competition for the steel market be fair. The Tokyo Round of trade talks specifically barred the kind of governmental subsidies—such as cheap credit and tax breaks—that the American steel industry is now complaining about.

The European Economic Community has warned that it would consider an anti-dumping move a hostile gesture, but it has no right to break the international rules at our expense—in effect, *exporting its unemployment to this side of the Atlantic*. If Europe or other countries can make a case of unfair competition against any American exports, they, of course, have a right to do so.

The slump in the steel industry has a worrisome effect on the ability of the industry to rebuild its aging facilities. The new profit incentives under the Reagan tax program were designed to encourage this, but the low operating rate and the comparatively low profits will make it harder to accomplish. Bethlehem Steel, for example, last July announced a $750 million modernization program (not, unfortunately, including Buffalo). Bethlehem, with 6,500 workers now laid off, says that "badly needed modernization is now threatened by a flood of imports on top of a lagging economy."

It is in the interest of the United States that international trade be free from high tariffs and other protectionist devices. But it is not in U.S. interests when both sides do not abide by the agreed rules. Trade should be not only free, but fair.

Mr. Speaker, this Nation will not tolerate, cannot tolerate, such behavior from our allies. Our domestic industry cannot compete against foreign plants that are unfairly subsidized by their governments. Nor can it compete against steel products that are dumped into our markets at prices below the cost of production abroad.

Commerce Secretary Malcolm Baldrige and the administration have already sent a signal of our national concern by beginning investigations of alleged unfairly priced imports from Romania, Belgium, Brazil, South Africa, and France. The Secretary further has said the Department is considering initiating additional investigations and those decisions will be announced within 2 weeks.

I hope this indicates that the administration is committed to vigorously enforcing our own existing trade laws. The alternative could be increasing pressures for protectionist legislation, such as fixed import quotas, which go against the grain of the administration's free trade policies. Again, as so many of us have said so often, and as the Buffalo Evening News editorial ended: "Trade should be not only free, but fair."

I hope the administration's investigations also alert the foreign producers that it would be in our mutual interest for them to come to the bargaining table or exercise some voluntary restraint in the steel sector.

I hope the administration would also take another in-depth look at the trigger price mechanism—TPM—to determine how it could be refined or revised to fashion it into the effective buffer against unfairly priced imports that it was intended to be. With the data from the first 9 months of this year, it is obvious the TPM is not working as it was designed to. Unless the TPM is developed into a more effective tool, congressional action may be our only alternative.

Yet, imperfect as it may be, I believe the TPM should remain in place, functioning, while these unfair trade practice proceedings are underway.

Of concern, for instance, is Secretary Baldrige's comment recently that, "We do not have the manpower to bring 100 suits and run the trigger price mechanism too."

That is of particular concern, in light of United States Steel's anticipated filing December 1 of suits against nine foreign countries.

It would, however, seem most logical to retain the enforcement of the TPM while these investigations are going on or if additional suits are filed. That would not only keep the pressure on as many fronts as possible to protect our markets from unfair imports but it would strongly signal foreign producers of the depth of our resolve to halt any illegal practices.

We must maintain a concerted effeort to halt the erosion of employment and production in our steel industry. That is vital to our national defense and to a healthy national economy.●

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Mr. BENJAMIN. Mr. Speaker, will the gentleman yield?

Mr. GAYDOS. At this time, I would like to recognize my good friend and colleague, the chairman of the executive committee, one who has dedicated his efforts during the last 5 years since we organized the Steel Caucus, to preserve this basic industry. He has been a most effective and most active member of the caucus, the gentleman from Indiana (Mr. BENJAMIN).

Mr. BENJAMIN. I thank the gentleman for yielding.

I have spoken with my friend from Pennsylvania and my friend from Ohio (Mr. REGULA), and those who appear by statement this evening to apprise this body and the Nation that its steel industry, steel communities, and steelworkers need their understanding, support, and assistance.

Six weeks ago, we asked that the President understand and assist in this dilemma. We asked that the President meet with us. To date, the President has been too busy to meet or otherwise discuss steel imports and resolution of the growing steel import menace.

Therefore, I now publicly urge that the President recognize, understand, and help resolve the plight of the American steel industry and its workers by convening a White House summit meeting on steel by mid-December while immediately moving to obtain voluntary restraints on imports or quantitative controls if negotiations fail on voluntary restraints.

Excluding raw materials and fabricating operations, there are 53,000 steelworkers laid off and 17,000 working short weeks within 26 companies producing 85 percent of the Nation's raw steel. This projects to more than one-half of a million American workers in related industries and businesses that are adversely affected by the steel industry operating at 63 percent of capacity.

Mr. Speaker, 14½ million tons of steel were imported into the United States during the first three quarters of 1981—up 24.5 percent or 2.9 million tons over the comparable period in 1980. The September figure was 64 percent higher than September 1980, and August set a record high of 2¼ million tons of imports.

I appreciate the President's earlier action in regard to the import of automobiles from Japan. After the dislocation of 200,000 autoworkers and imports from Japan increasing from 11 to 26 percent, the U.S. Government urged and received a 3-year voluntary restraint. While the domestic automobile market continues to be depressed, the voluntary restraint has been of some relief.

I urge that identical consideration be given to the steel industry. The economy of the Midwest is sufficiently predicated on steel to warrant relief without delay or excuse.

Four years ago, my colleagues and I asked the previous President to address an import problem which ranged between 14 and 18 percent, not nearly 25 percent of domestic consumption. In response, President Carter convened a White House summit which produced the Solomon report and the trigger price mechanism as well as a tax blueprint which has generally been incorporated in the 1981 Economic Recovery Act. It also produced the steel stretchout bill signed into law this summer by President Reagan.

The plan agreed to then, which remains valid today, is that the U.S. steel industry could become competitive in the world marketplace if provided tax relief encouraging capital formation for modernization, environmental cost relief to reduce capital and operating costs, and finally, relief from imports representing dumped or subsidized steel. The proper enforcement of U.S. trade laws for at least 3 to 5 years after the start of modernization is absolutely necessary to enable the industry to bring new equipment and systems online.

Mr. Speaker, the program of modernization was to begin, and in fact, has partially begun. The steel industry announced $5½ billion of modernization and improvement. Then the bottom fell out of the economy. The industry would probably have proceeded if their domestic market, although reduced by the economy, was not absolutely squeezed by a record-high import avalanche. In other words, as the economy contracted, foreign steel companies, through subsidization and dumping, proceeded to administer the coup de grace. This has effectively halted the long-sought modernization of the U.S. steel industry, disrupted communities and ruined families who have little relief because of previous program reductions by this Congress.

I began by urging a White House summit meeting and immediate voluntary restraints or quantitative control of imported steel. Mr. Speaker, I renew this request and trust that the President will be convinced of the necessity of meeting and restraining now.

I also urge:

First, that the appropriate divisions of the Department of Commerce and International Trade Commission be maintained at sufficient strength to handle the investigations and resulting complaints prepared and filed by the Secretary of Commerce. This would mean that sufficient funds be provided by the Congress and used by the administration to prevent further importation of dumped and subsidized products and to proceed against those nations and firms who have chosen to ignore and flaunt our laws.

Second, that the domestic steel manufacturers withhold their import complaints, now proposed to be filed on December 1 if the President agrees to meet and act on the steel crisis. If the President does not so agree, that the complaints be filed but the administration retain and improve the trigger price mechanism rather than discard or discontinue it because American producers choose to exercise their rights under law. Finally, if the steel company complaints are filed, that the administration process those complaints expeditiously and fairly and that the results of the complaints be limited to the merit of the evidence and not affected by supposed foreign policy considerations.

Third, that the administration and Congress cooperate to:

Improve the trigger price mechanism and incorporate it in statutory law;

Review U.S. trade laws and improve them with respect to changing world conditions;

Establish a quantitative restriction which would be correlated to the growth or contraction of the American economy thereby protecting domestic companies and workers during recessionary periods;

Evaluate and determine necessary actions to assist the steel fabrication industry, specialty steel industry and steel marketing firms, all adversely affected by the inadequacies of the present trigger price mechanism and offshore marketing entities;

Encourage a new export program to promote overseas sales of American steel and steel products.

Mr. Speaker, the President can turn the economy around today with appropriate emphasis on interest rates, automobile production, housing starts, and steel manufacturing. We, of the House Steel Caucus, know that we can help. We ask that the President immediately act to restrain imports—and find time to meet with us and the industry, its work force and those of his administration who would work to implement his program. I believe that the five-point program just outlined is a base from which we could commence our partnership for the improvement of the economy. I trust that the President will agree. I look forward to a joint venture that will improve the economy, revitalize the steel industry and put steelworkers back to work on a full-time basis.

Mr. GAYDOS. I want to thank the chairman of the executive committee.

At this time, Mr. Speaker, I would like to reserve the balance of my time, pending a presentation by one of my colleagues who had been skipped over.

The SPEAKER pro tempore. The gentleman from Pennsylvania.

Mr. GAYDOS. I thank the Speaker.

At this time I would like to yield to the gentleman from Ohio, a member of the Steel Caucus executive committee, Mr. REGULA.

Mr. REGULA. Mr. Speaker, I want to thank the gentleman from Pennsylvania, the distinguished chairman of the Steel Caucus for reserving this time to discuss an issue of importance not only to the steel industry, but to the entire domestic economy—the problem of unfair foreign trade practices.

For the past 7 years, the steel industry, worldwide, has been in a severe depression. The post-World War II era was a period of enormous increase in steel output, but the boom came to an abrupt end in 1975. The U.S. steel industry has not been spared.

Mr. Speaker, I cannot emphasize enough that a strong American steel industry is essential for a strong American economy. No economy can develop and grow without it. It is a key material in the revitalization of American industry. It is vital for national defense, energy production, construction, manufacturing, transportation, mining, and agriculture.

For some time, however, the American steel industry has been losing its competitive edge in world markets. If the domestic steel industry continues to decline, our country, our economy and our national security will be jeopardized.

The major problems affecting the industry continue to be inadequate capital formation, unfair international trade practices and excessive regulation. Although our domestic steel industry is beset by serious difficulties, it has the potential to surmount those difficulties.

On their own, domestic steel companies have been moving forward to improve efficiency and productivity and despite the sharp recession which significantly effected the industry in 1980, progress has been made in this effort.

While the steel industry has taken major steps to modernize, improve efficiency, meet environmental goals, and improve capital availability, public policies must support, not hinder, the industry's modernization efforts. If they do not, the industry's own efforts will be inadequate to the task.

Policies of the Reagan administration have begun addressing the most critical problems facing the industry. Accelerated cost-recovery, providing for a faster writeoff of capital expenditures, included in the tax bill, will assist the industry with capital formation to promote modernization efforts.

Federal regulations are under review to determine which have hampered business and not proven cost-effective. With the passage of the steel "stretch-out" amendment, the industry was given a necessary extension in complying with Clean Air Act deadlines to enable further investment on modernizing existing facilities.

In recent weeks, however, the trade issue has come to the forefront as the Department of Commerce has initiated investigations into low-cost steel imports from five countries. I applaud the Reagan administration's strong commitment to the enforcement of our trade laws and especially the concept of fair trade, but I am distressed by signals from the administration that the trigger price mechanism, the administrative procedure for detecting violations of U.S. trade laws may be destroyed if the industry pursues its own cases against foreign producers.

While the TPM is not perfect, it is currently the best guarantee that our trade laws will be enforced, and I believe that terminating the TPM would be a very unwise policy at this time.

Despite the sharp drop in demand for steel in the United States, steel imports have risen steadily this year. In August imported steel captured a record 25 percent of the U.S. market and represented 22 percent of the market for the third quarter overall.

Mr. Speaker, I strongly support free trade, foreign steel should have the opportunity to compete in American markets so long as it is fairly traded. But I do not believe the United States can be the only open world market for steel and ignore the penetration of dumped or unfairly traded low-cost steel imports without crippling its own domestic steel industry.

Under existing international trade agreements, the United States imposes no restrictions on steel imports. What is in place is the trigger price mechanism which was established in 1978 as a price minitoring system to facilitate enforcement of U.S. antidumping laws.

The need for a TPM-type mechanism is even more critical because of the present depressed state of the world steel industry and because more than half of the steel produced in the world comes from government-controlled or govenment-subsidized steel companies, including those in Great Britain, Belgium, Italy, and France.

Foreign governments have taken various actions to help reduce production costs for their steel industries including: below market loans, low-cost raw material imports—made possible by subsidies for ore and coal mines and oil imports—market-sharing arrangements, tax abatement, and quotas on imports. Such methods of financial assistance have enabled foreign suppliers to price their steel below cost.

Unfair steel imports transfer to American steel producers and workers the unemployment and adjustment problems that foreign producers and their governments are trying to avoid.

Mr. Speaker, as I have said, the American steel industry can modernize and regain its competitive edge in world markets, improving its ability to produce low-cost steel to the American market. But to do so, the industry must make significant capital expenditures during the next decade.

A closer balance between world supply and demand is expected in the latter half of the eighties than was the case in the seventies. Unless U.S. capacity increases as world demand goes up, the U.S. economy will be seriously affected by tight steel supplies and a growing steel trade deficit. Any increased reliance on foreign sources would, during periods of steel shortages, result in increased world prices that would be borne by American consumers.

The biggest potential impediment facing the steel industry is unfair foreign-priced steel imports. Enforcement of U.S. trade laws through a strong trigger price mechanism is, at present, the most effective answer to the problem and is essential to the industry's revitalization program.

While controlling Federal spending and reducing the excessive rate of inflation are important priorities for the Federal Government, so too should be the problem of reindustrialization. The strength of our Nation is mirrored in the strength of our domestic industries. Government policies must support industry's rebuilding efforts if the Nation is to regain its strength and continue as the leader of the free world.

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Mr. GAYDOS. Mr. Speaker, I now yield to my colleague from Alabama (Mr. BEVILL), a member of the executive committee of the steel caucus.

Mr. BEVILL. Mr. Speaker, America's steel industry has earned its position as one of this country's most important economic pillars. It is a pivotal factor in the Nation's continued economic stability.

However, for months now, we have been witnessing a devastating foreign assault on our domestic steel industry, which threatens its future and endangers other major U.S. industrial giants.

In the first 9 months of this year, imported steel has increased its encroachment into the U.S. market, up by nearly 25 percent over last year's levels. In September of this year, for example, imports accounted for more than 20 percent of our country's steel market. If that trend is allowed to continue, this year will set a sad new record for imported steel in this country.

I met several days ago with managers for the Republic Steel plant in Gadsden, Ala., located in the Fourth District of Alabama, which I am privileged to represent. We shared our concerns about the growing amount of imported steel flowing into this country. As these imports increase, the number of America's steelworkers who are laid off or who are on reduced hours also grows.

Republic's Gadsden plant, which is one of our major steel plate producers, has been hit hard by the growth of imported steel. The plate steel import market has grown from a 19-percent share in the first quarter of this year to 25 percent in the second quarter.

The figures for August of this year were even worse. In that month, imported plates took more than one-third of this country's plate market. Republic's plate mill has suffered con-responding reductions with this increase in imported plates.

The Republic managers asked me how this country could permit foreign steel imports to grow, putting our own steelworkers out of work. They asked me what could be done to stop unfair dumping of foreign steel, at artificially low prices, subsidized by foreign governments.

I must confess that I have asked these same questions, as have my fellow members on the congressional steel caucus. One method to stop this unfair economic attack is to implement strict enforcement of the Trigger Price Mechanism, which was created to stop wholesale dumping of steel in this country by foreign producers.

This country has been richly blessed with the raw materials necessary for the production of steel. We continue to develop our inland waterways and other methods of surface transportation to enable our producers to effectively market their products. But we are neglecting one of the most vital needs of the domestic steel industry—adequate protection from unfair foreign competition. If that competition drives our own producers out of business, we will be at the mercy of foreign governments for our domestic steel needs. The lesson we learned from OPEC should serve as sufficient warning for us to protect our own interests regarding domestic steel production.

Swift, effective implementation of the trigger price mechanism must take place. We owe that to the American steel industry. We owe that to the American economy. We owe that to the American people.

Mr. GAYDOS. Mr. Speaker, I thank the gentleman from Alabama.

At this time I yield to my neighbor and colleague from the city of Pittsburgh (Mr. WILLIAM J. COYNE), a member of the steel caucus.

(Mr. WILLIAM J. COYNE asked and was given permission to revise and extend his remarks.)

Mr. WILLIAM J. COYNE. Mr. Speaker, I rise to associate myself with the remarks of Congressman GAYDOS and Congressman BENJAMIN.

I also would like to submit for the RECORD the remarks of Mr. Thomas C. Graham, president and chief executive officer of Jones & Laughlin Steel Corp. to a Symposium on American Productivity in Pittsburgh, Pa., on November 4, 1981.

Mr. Speaker, the remarks follow:

REMARKS BY THOMAS C. GRAHAM

Seriously, I hope that when we are finished here today, you don't feel that your misgivings were well founded. We hope that in these sessions we can shed some light that will be of practical help in getting America's productivity curve rising again.

As you know, that curve has been virtually flat in recent years. It has happened despite an enormous investment in new technologies by the private sector in the preceding decades.

I recall the fifties, when computer control of manufacturing processes was beginning to spread. People were saying that before long we would see factories without people . . . that computers and robots would do everything without human help.

Well, we're a long way from that, and in many industries we may never get there. We've found out, if nothing else, that it still takes a lot of people to run the computers and maintain the equipment.

Actually, our fascination with computers and the other elements of automation may have been one of the things that led us into the fix we're in. We have been neglecting the human factor in the productivity equation, perhaps because people are harder to manage than machines.

But now we are really up against it. A continuing high rate of inflation and runaway interest rates are making it very difficult for many industries to accumulate the capital that once was used to buy cost-saving technologies. This has been expecially true in the steel industry, but certainly we are not alone.

By force of circumstance we are looking more closely at the other side of the productivity equation . . . to people. We are beginning to see that people, if properly motivated and effectively directed, can be the key to economic revitalization.

But I think it is worth asking, which people? Who are they, and what would we have them do?

In a modern industrial organization there are, for purposes of this discussion, two groups of people, clearly separate and identifiable. They are the management group on the one hand, and the production workers on the other.

A great deal of activity is underway these days concerning that second group. The thrust of it is to increase the involvement of the production workers in the problem-solving process on the shop floor. It is the American adaptation of the quality circle concept that originated in Japan. And we all know how Japan is eating our lunch in the marketplace.

The concept is that if the employees are given the chance to voice their opinions in decisions involving their workplace:

One, they will come forth with many good suggestions for making the shop run better;

Two, they will become personally committed to shop goals or corporate goals and perform accordingly;

And three, they will derive a sense of satisfaction from their involvement that will help to overcome the worker unrest that is a characteristic of many industrial organizations.

I want to state quickly that I do not quarrel with any of this, in principle. There is no doubt in my mind that the failure to enlist the full contribution and the enthusiastic commitment of the hourly work force is at the root of many of our industrial problems.

But I must also assert that any effort to establish quality circles or participation teams is doomed to failure unless attention is first given to that other group of people in the organization. In much of the theorizing that is going on today about productivity improvement, the role of management is not given the weight it deserves.

In my view it is critical. Any effort to improve productivity with people rather than machines, should begin with the focus on the management organization.

In my company, we arrived at this plateau in our thinking in 1975. I'd like to tell you a little of our history since that time, in the hope that it will give you some new insights into the productivity problem, and how to solve it.

In 1975, J&L was experiencing some very difficult times, as was the rest of the steel industry. When we developed a plan to improve productivity through a better effort by our people, it was more than an academic exercise. It was a matter of dire necessity.

As we looked at the way our company was being operated, we saw a management that was living in the past. We saw operating practices that were carry-overs from the days following the end of World War Two, when the American steel industry was dominant in the world.

We practiced an authoritarian style of management that was, and to a degree still is, common to the steel industry. The boss gave the orders, and the employees carried them out. No questions asked. As I've said on other occasions, this business used to be more totalitarian than the Prussion Army. As we looked deeper into our company, we came to understand why the Prussian Army lost World War One.

I'm sure that in examining any troubled organization you will find managers who consistently put the blame for poor performance on the wrong things. It means either that they hove failed to identify the real problems, or having identified them correctly, have been unable to solve them.

Such was the case in our company.

Some of the excuses that were given in those days are amusing in retrospect, although they were not funny at the time.

I remember a manager at one of our integrated steel plants, many years ago, who was being pressed to explain why a new five-stand cold reducing mill could not produce at more than half its designed capability.

He said the engineers had done a poor job of building it, and that it was leaning to one side. Having a nautical turn of mind, he described the mill as "listing to port."

If you have ever seen the mass of heavy machinery that makes up a modern tandem mill, you will realize what a mind-boggling idea that is. It was of course, nonsense, and only reflected that manager's inability to come to grips with his real problems, which were many.

There's another significant point I should mention in connection with this story.

It is this: in implementing changes in management thinking, it helps a heck of a lot if the fellow on top is thoroughly familiar with the production processes, and the equipment.

Professional managers get to where they are in part because of their ability to explain and defend what they are doing. The manager with his leaning tandem mill is an example of how that talent can be misdirected. In the long run, a defense of the status quo can hurt the business.

I spent many of my earlier years as an engineer for J&L, and I've had my hands on most of the equipment we now operate. That discourages a lot of nonsense when we discuss operating problems.

At any rate, we set about to improve the effectiveness of our management organization with a number of broadly based initiaties, and I'll mention just a few of them.

We reorganized the operating and sales functions into divisional business units. The idea was to give managers more decision-making authority and encourage an entrepreneurial approach to the production and marketing of our various product lines.

We established programs of recruiting, training and development in order to upgrade the quality of personnel in our managerial force, and to improve managers' skills and their knowledge of the business.

We discarded automatic pay increases in favor of a compensation program based on performance. We replaced ineffective managers on one hand, and established programs of rewards and recognition for superior performers on the other.

And we sought to open channels of communication that would facilitate the flow of information and ideas from the top down, and from the bottom up. The intent of all this was to establish a climate of change throughout the company that would open the way for new ideas and innovative problem solving.

The need for new approaches was nowhere more apparent than in the management's relationship with the United Steelworkers union and the hourly work force.

Across the ranks of management there was an institutionalized practice of blaming shortfalls in operating performance on the attitudes of the hourly employees, or on established work rules or labor practices, none of which could be changed.

Time and time again management discussions would lapse into a dialogue in which the operating people would agree, yes, we do have this labor relations problem, and we have asked the labor relations department to solve it, and that's where it stands.

And the labor relations people would reply that it was not really a labor relations problem. It was really an operating problem perpetuated by contractual limitations that we can do nothing about. The matter would be left hanging there, and the problem would remain unsolved.

This defeatist attitude resulted in a generalized managment failure to address many critical problems that were affecting our business. We had many managers who for years had been using supposedly insoluble employee relations problems as an excuse for poor performance. The cumulative effect was to put the very life of the enterprise at stake.

Negative attitudes were also reflected in a serious lack of communication between supervisors and their hourly workers, and in the entrenched hostility between the two groups that was a legacy of an earlier time.

There was the inflexibility that characterized many of the legalistic aspects of the labor-management relationship.

And finally, there was a generalized fear of change, and the more specific fear of many managers that a change in the relationship with employees would threaten their livelihood. You'll hear more about this in one of the workshops this afternoon.

I should point out that these impediments were not universal. In some areas in the company, highly skilled managers were dealing forthrightly and successfully with their employees. Their performance reinforced our conviction that change was not only necessary, but also that it was possible.

Overcoming these impediments was not something that could be done overnight. The first challenge was to change the attitudes and supervisory habits of hundreds of managers throughout the company, and students of human nature will recognize that this is no easy task.

To do this we adopted a stick-and-carrot approach. The stick was to let the managers clearly understand that blaming the workers or an intransigent union for shortfalls in performance was no longer an acceptable excuse. We began to publicly identify these shortfalls as management failures.

It came as a shock to many managers that what had been appropriate and accepted for many years was suddenly being rejected out of hand. This made for some unpleasant dialogue, but we coupled it with the carrot. We indicated that dealing successfully with the employees and their union representatives would be regarded as a management skill that could advance their careers. We began to single out effective people managers for special monetary rewards and recognition.

In doing these things we relied on the conviction that dedicated managers want to know what they are being measured against. When the criterion is clearly understood and accepted, good people will put forth their best efforts to measure up.

Meantime, we were also taking some organizational steps to support attitudinal change. The industrial relations department was reorganized to bring together the three functions that deal with the human resources of the company, that is, personnel relations, labor relations and industrial engineering.

I think it is worth noting that one of the most productive moves was bringing the labor relations people and the industrial engineers together in one department.

Under the old order they had been separate kingdoms, and they were constantly at war. Now they are working hand in hand, and the I.E.'s have been able to develop effective production incentives for the hourly employees that have cracked long-standing production bottlenecks. They have also revitalized the long-standing employee suggestion plan, which pays cash awards for cost-saving ideas.

These efforts are consistent with our view that monetary rewards for hourly employees can be just as effective as they are for the managerial force in encouraging better performance.

The primary mission of the new industrial relations organization is to change the labor-managment relationship from one of confrontation to one of problem solving. Efforts at all levels are being made to achieve this goal.

The relationship with the United Steelworkers' union both at the international and the plant level has been consciously turned from one of adversarial posturing to a serious and determined effort to solve operating problems.

And we are committed to maintaining extensive communication with union representatives. We believe that each side must understand the other's problems if a joint problem-solving effort is to be successful.

We have also introduced into this relationship a recognition of employee concerns that might arise from management efforts to improve productivity.

The very word productivity has come to have bad connotations. This is because industrial managements often have ignored the employees' fear that productivity improvement means a loss of jobs.

We have been successful in negotiating agreements with several local unions which accommodate the company's need for more productive use of people, while at the same time recognizing the employee concerns for job security.

And finally, with these management strategies in place, we began to introduce our hourly employees to the problem—solving process. We took our first step several years ago, at one of our smaller plants, where we felt the prospects for success were good. Hourly employees and their union representatives were invited to participate in the meetings of a task force charged with solving a productivity problem. The results were very positive, and we have been encouraged to try similar approaches in other plants, on a very selective basis.

In addition, we are now working diligently to put labor-management participation teams in place in a number of our major plants.

LMPT's as they are called, are being established in accordance with an agreement negotiated last year with the United Steelworkers. They are a counterpart to quality circles so prominently used in Japan and in our automotive industry.

We have endorsed LMPT's from the beginning because they clearly offer an important tool in our effort to secure the full participation of all our employees and their commitment to the vitality of our company.

Thus, in many ways we have set an evolutionary process in motion, and we can see it gaining momentum. Managers throughout the company have accepted the idea that progress in employee relations is possible, and that in itself is real progress. Long-standing problems that were once considered insoluble are being attacked with enthusiasm by both parties to our labor agreement. A more participative style of management is emerging at J&L, and effective problem solving is taking place on the shop floor.

As to the results of all this, it is no overstatement to say that J&L is experiencing significant productive gains. The basic measure of overall productivity, that is, manhours per ton of steel produced, has shown a steady decline since 1973. This occured even in 1980, when steel production dropped sharply during the mid-year market slump. Ordinarily that situation also produces a sharp decline in productivity.

Specific achievements that have contributed to these results include:

Productivity gains of as much as 64 per cent on the slabber and hot strip mill at our Indiana Harbor Works, which have in effect added more than a million annual tons of capacity to the plant.

Productivity gains in the iron and steelmaking end of the Cleveland Works, which have added 30-thousand tons a month to the output of that plant.

Productivity gains in our seamless pipe production units which are equal to the output of a whole new seamless mill.

This last improvement is especially significant because it has come at a time when the energy shortage has created a very hot market for oil well pipe and tubing. Our ability to capitalize on this market has resulted in a very substantial improvement in our bottom line.

What had been regarded as an ailing steel company became, during the first half of this year, the most profitable steel company among its comparable competitors in the domestic industry.

I would not try to kid you that every effort at productivity improvement by the means I am advocating will produce results of this magnitude. Most of the gains come in small steps. In fact, even these examples are the result of an accumulation of less spectacular achievements. But we have seen enough of these achievements to convince us that we are on the proper course. J&L is a stronger company today than it was six years ago. The human factor in the productivity equation made the difference.

Mr. GAYDOS. Mr. Speaker, I yield to my colleague from Illinois (Mr. O'BRIEN), a member of the executive committee of the Steel Caucus.

Mr. O'BRIEN. Mr. Speaker, I thank my friend for yielding. He has enjoyed a long and distinguished career in this Congress, and in no period of it has he lent more luminousness to his career than as chairman of the Steel Caucus.

In my view there is no single cause for the problems facing the steel industry. And of course, there is no single simple solution. Certainly within the past year much has been done to stimulate and revitalize the steel industry—such as faster depreciation, tax credits, and environmental extensions. But, this will all be to no avail if we do not take some action in the matters concerning trade.

Unfortunately, we are continually in a crisis-intervention situation. We continue to treat the symptoms rather than the disease. What we must do is clear: We must enforce our own trade laws, and trade policies and administer them effectively. We must do this to offer some stability to the business community. If our trade policy continues to be waffling one how can we expect our business community to function effective and efficiently without being able to do any long range planning, the cornerstone of any successful and healthy business. We need a firm, stabilizing trade policy, that we will enforce and one that others can rely upon.

I refer to the trigger price mechanism (TPM) which is a mechanism that was designed in 1977 to help identify and stop dumped steel imports. The TPM, however imperfect, does provide limited benefits for the industry by offering a method for insuring that imports represent fair competition in our domestic market.

The fact of the matter is that steel imports have risen substantially over the last 6 months, a record high of 25 percent import penetration in August, which triggered an investigation by Commerce of those imports sold below set levels.

The Commerce Department has self-initiated complaints, in a massive effort to prevent the domestic industry from filling large numbers on its own and in the meantime to continue to administer the TPM. But, a domestic steel company, as is allowed by law, has since then indicated it will file complaints against other countries in addition to those on the Commerce list.

In turn, it disheartens to read in the newspapers that the Secretary of Commerce predicts that if the U.S. steel companies file their own cases at this time, the downfall of the TPM would be inevitable. Also, it has been indicated that Commerce could not determine beforehand how many suits it could handle without abandoning the TPM.

My friends, this is practically the same situation we found ourselves in over a year ago at which time Commerce abandoned the TPM after a U.S. steel company filed suit.

If we discontinue the TPM, it will be another indication of our Government's unwillingness to enforce its own trade policy. Ironically, this threatens to be done at a time when steel import penetration is extremely high, exactly at a time when the TPM is needed most.

I look to the administration to address this situation immediately and insure that we have a trade policy which is enforced and a policy on which we can rely. If our Government does not follow through, the Congress may want to take legislative action, a course already suggested to us by the steel industry. Our Nation's economic recovery depends on a sound and fair trade position which can be counted on in times such as these—and not the dubious policy which has been our consistent experience in years past.

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Mr. GAYDOS. Mr. Speaker, I want to thank my colleague, the gentleman from Illinois (Mr. O'Brien).

At this time I yield to my neighbor from the city of Johnstown, the gentleman from Pennsylvania (Mr. Murtha), who is a member of the executive committee of the Steel Caucus and who was one of the original members, along with the gentleman from Illinois (Mr. O'Brien), in the formation of the caucus.

Mr. MURTHA. Mr. Speaker, I want to thank the gentleman from Allegheny County, Pa., for yielding, and I want to commend him for taking this special order for his tremendous interest which has meant so much to the steel interests and to all the other members of the executive board. I wish to commend also the gentleman from Illinois (Mr. O'Brien), who has done so much in order to stabilize the steel industry in this country. I would have to say that if it had not been for the gentleman from Pennsylvania (Mr. Gaydos), the gentleman from Illinois (Mr. O'Brien), the gentleman from Ohio (Mr. Regula), and other members of the executive board of the Steel Caucus, and, of course, the gentleman from Indiana, Mr. Adam Benjamin, the executive committee chairman of the steel caucus, the steel situation, as bad as it is, would have been even worse.

I can remember 4 years ago, when we started this caucus, the imports were approximately 17 and 18 percent, and we projected that they could be as high as 30 percent. We talked about the probability of national security being affected by the fact that steel imports were increasing so rapidly.

Now we are moving in that same direction again. Hopefully, the suits that have been brought by the Commerce Department will have some impact, again stabilizing the steel industry. But the very thing we worked on so diligently with the unions, with the companies, and with the Government was trying to avoid these ups and downs that we have had during these past years in the steel industry.

I remember back in 1959 and 1960 the tremendous layoffs we had in the steel industry which affect mining and, of course, all the other industries in the area which I represent. Now we are back again, after having 9 or 10 fairly good years, having years of heavy layoffs, of approximately 45,000 people throughout this country in an industry which is a basic industry in the United States.

So I hope we will be able to continue the meetings and to have cooperation from the present administration, and I hope that they will understand that what we have been trying to do is to bring together all the elements and stress the significance of the need to reduce the imports from foreign countries which subsidize their steel and which give special benefits to their companies and then undersell steel in the United States and put American workers out of work.

It is very clear to me that we need special cooperation in this industry in particular. We modernized the foreign steel industries after World War II. We modernized the foreign countries and companies, and then they undercut us and undersell us and put Americans out of work.

So we have a lot of work to do. I appreciate the dedication and devotion of the chairman in particular. There is nobody who has done more for the steel industry in this country than the gentleman from Pennsylvania, Mr. Joe Gaydos, and all of us are deeply obligated to this Congressman from Allegheny County for the work he has done.

Mr. Speaker, I express my appreciation and the appreciation of the people who work in the steel industry in my area for all the work he has done.

Mr. GAYDOS. Mr. Speaker, I want to thank my colleague, the gentleman from Pennsylvania (Mr. Murtha), for those very kind personal remarks as well as those directed to the Steel Caucus.

● Mr. APPLEGATE. Mr. Speakhr, I want to thank my friend from Pennsylvania, Mr. Gaydos, for taking this time to draw attention to the current plight of the steel industry.

After the trouble the industry found itself in, in 1977, the Steel Caucus was created and we pursued and achieved a system in which the main culprit at the time, imported steel, could be controlled. The trigger price mechanism, or TPM as it is referred to, is a sound mechanism which, when actively enforced, works to reduce foreign steel imports.

Once again, however, we find ourselves with a depressed steel industry and again, in spite of the presence of TPM, the primary cause of our problem is high levels of imported steel. Why is this? Frankly, I believe it is a result of a lack of enforcement of the TPM by the Reagan administration and has greatly contributed to the increase in import levels. This uncaring attitude has resulted in massive layoffs throughout many steel-producing communities in this country such as those in my congressional district in southeastern Ohio. Furthermore, the ripple effect of these layoffs results in a very depressed overall economy.

We now find ourselves in a situation in which enforcement of the TPM to any degree is in question due to the filing of antidumping suits by the United States Steel Co. These suits coupled with the seven suits already promised to be filed by Secretary of Commerce Baldridge, would occupy the time of the Commerce staff people to the point where TPM would cease to function at all. Secretary Baldridge is to be commended for his intended actions as this will slow the rate of imports but will still allow TPM to function. United States Steel's actions, however, will only complicate matters and may not result in any significant change in the future because of the loss of the TPM.

I urge United States Steel officials to reconsider their position and request Secretary Baldridge to work with the firm to make a commitment that action will be taken at a more appropriate time to counter the current import levels. By doing so, proper legal action can be taken and results achieved without jeopardizing the TPM in spite of its weaknesses.

Again, I thank the gentleman from Pennsylvania for taking the time to discuss this very important matter.●

The SPEAKER pro tempore. Under a previous order of the house, the gentleman from New York (Mr. WEISS) is recognized for 60 minutes.

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

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STEEL IMPORT SITUATION WORSENS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BENJAMIN) is recognized for 60 minutes.

Mr. BENJAMIN. Mr. Speaker, on November 19, I reported to this House that record steel imports of 14½ million tons entered the United States in the first 9 months of 1981. I also reported that the September figure was 64 percent higher than September of the previous year.

Unfortunately, the situation continues to deteriorate. October's imports increased 7 percent over September and exceeds October of the previous year by 64 percent. By the end of October nearly 16½ million tons of steel had been imported into the United States, an increase of 28 percent over 1980. At the end of September, 20½ percent of the steel used in the United States was foreign made compared to 14½ percent at a comparable period in the previous year.

The impact is clear—more than 63,000 steelworkers laid off and another 14,000 working less than a full week. In the last 3 weeks, 10,000 more steelworkers became statistics.

Despite the obvious downturn in the steel economy, the House Steel Caucus has not been able to persuade the President of the absolute necessity of convening a White House summit meeting and immediate voluntary restraints or quantitative control of imported steel.

The officers of the caucus wrote to the President on October 7, over 2 months ago, to urge a meeting to discuss the condition of the carbon and speciality steel industries. An interim reply was received 2 weeks later.

On November 20, another letter was directed to the President to restate the urgent need for a steel summit meeting with industry, labor, Cabinet, and caucus officials. Shortly thereafter, a response was received to the initial communication indicating that an early meeting was not possible.

I personally regret that response and trust that it does not reflect a cavalier attitude on the growing unemployment.

Last Friday, the chief officers of several major steel companies, who had announced intentions to file appropriate trade actions, met with the President. The administration, according to a White House spokesman, agreed to ask the European Economic Community to voluntarily restrain steel shipments to the United States. Supposedly, the President was to direct the Secretary of Commerce to work out an accommodation with the Europeans to deny shipments of cheap steel to the United States.

Today, the Commerce Department disputed that White House report. It stated that the Secretary of Commerce would seek compliance by the Europeans with U.S. trade laws and warn them of the consequence of dismantling the steel trigger price mechanism.

The communications difficulties of the White House—whether to us or to the public—is extremely regrettable. Regardless, the clarification of the Department of Commerce is welcome.

Frankly, enforcement of our trade laws is all that the U.S. steel industry or its workers and communities have ever requested. Contrary to the December 7, Wall Street Journal editorial, there has not been and will not be any attempt on the part of the House Steel Caucus to invoke protectionism. On the other hand, the caucus will expect that free trade be treated as fair trade and all relevant laws be enforced regarding steel products—as laws should be observed on all aspects of international trade.

That White House meeting of December 4, partially responded to my second point of November 19. The other urgings of that day remain viable and are repeated for emphasis:

That the appropriate divisions of the Department of Commerce and International Trade Commission be maintained at sufficient strength to handle the investigations and resulting complaints prepared and filed by the Secretary of Commerce. This would mean that sufficient funds be provided by the Congress and used by the administration to prevent further importation of dumped and subsidized products and to proceed against those nations and firms who have chosen to ignore and flaunt our laws.

That the administration and Congress cooperate to:

Improve the trigger price mechanism and incorporate it in statutory law;

Review U.S. trade laws and improve them with respect to changing world conditions;

Establish a quantitative restriction which would be correlated to the growth or contraction of the American economy thereby protecting domestic companies and workers during recessionary periods;

Evaluate and determine necessary actions to assist the steel fabrication industry, specialty steel industry, and steel marketing firms, all adversely affected by the inadequacies of the present trigger price mechanism and offshore marketing entities; and

Encourage a new export program to promote overseas sales of American steel and steel products.

Mr. Speaker, my concern on steel imports is also reflected in the recent specialty steel industry petition for relief under section 301 of the 1974 Trade Act.

On January 3, 1981, the Department of Commerce established a surge mechanism to restrain dumping and other unfair import practices affecting specialty steels. By July, imports of tool steel equaled 37.7 percent of apparent consumption.

Since then, import penetration rates have accelerated with little action from the Commerce Department. For the third quarter, stainless sheet and strip imports were 11.2 percent of the market; stainless bars reached 26.6 percent; stainless wire rods imports reached 47 percent and alloy tool steel hit nearly 40 percent penetration.

It appears that in certain instances foreign producers are selling in the United States as much as 54 percent below the U.S. price for certain specialty steel products. It is no secret that the majority of foreign specialty steel producers are either owned outright or are heavily subsidized by their governments. For example, the steel industry in the United Kingdom is 79 percent owned by the Government; in Brazil it is 68 percent; Italy 57 percent; Sweden 59 percent.

Clearly, the domestic specialty steel industry, as efficient as it is, cannot compete against the massive subsidization of foreign steel mills by their governments.

It is time for our Government to take comprehensive and immediate steps to halt the flow of unfairly traded specialty steel imports and to insist that our trading partners abide by the international trade agreements to which they are signatories.

The situation now includes suits by the Department of Commerce and the specialty steel industry with others expected shortly from the carbon steel industry. Without question, these actions reflect a failure to enforce U.S. trade laws. The General Accounting Office previously found that 40 percent of the steel arrived in contravention of U.S. law. Mr. Speaker, I would not doubt that this figure may now be as high as 75 percent—if not more.

While some Americans in high places care less and some industry actions are not helpful, most Americans do want a viable and inherently strong steel industry. Certainly, we of the Steel Caucus do—for the benefit of our communities and constitutents—and for our national good.

Therefore, Mr. Speaker, we again call on our President to keep his campaign pledge to the steel industry and enforce the trade laws with adequate legislation and manpower. We look forward to turning the industry's plight around before more steelworkers lose their jobs. Mr. Speaker—our time is short and our mission important—this is where the President can deliver—and should. His response could make a lot more Christmases brighter than they might otherwise be in Gary, Pittsburgh, East Chicago, Johnstown, and other steel cities.

WITHDRAWAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3039

Mr. HUTTO. Mr. Speaker, I ask unanimous consent to withdraw my name as cosponsor of H.R. 3039.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

A FIFTH COLUMN IN THE TRADE WAR?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. GAYDOS) is recognized for 60 minutes.

Mr. GAYDOS. Mr. Speaker, today we are literally knee deep in a flood of dumped foreign steel brought on by the willful violation by our trading partners of their solemn trade agreements, and the Subcommittee on Trade this week is to resume hearings on U.S. trade policy for the future.

Scheduled to testify about the American consumer's stake in even more open world trade of the one-way kind we have today is a relatively new lobby group, the Consumers for World Trade.

The group goes by the initials CWT. CWT also means hundredweight. It is kind of clever, and it is connected to commerce.

CWT's recruitment and informational literature proclaims it to be a citizen's movement devoted only to lower priced consumer goods through trade, and to explaining to other citizens that their stake is enormous in the kind of trade we have today.

This is the face CWT uses in appearing before Congress and the International Trade Commission and in dealings with the U.S. Trade Representative.

This, like many things in world trade, is true as far as it goes.

But, like most things in world trade, it does not go far enough.

If the House will hear me, I will take the Members a step beyond CWT's representations.

We will go through the looking glass and into a frame of reference where we can see the props that hold up the image.

By the way, the props are not American made, as we shall see.

Consumers for World Trade was loaned $11,000 by the American Importers Association in July 1979, apparently a startup loan.

This loan has not been repaid as of March 17 of this year, according to a notation from CWT that was filed with the Internal Revenue Service.

This notation was filed in connection with CWT's tax-exempt and nonprofit status as a civic league.

The House must hear the phrase "civil league" in quotation marks to indicate some skepticism on my part, Mr. Speaker.

The notation said the loan is to be repaid as soon as CWT is self-sufficient.

The House should hear this phrase, as soon as self-sufficient, in italics to indicate emphasis on my part, Mr. Speaker.

It means they are not now self-sufficient.

The American Importers Association, now called the American Exporters & Importers Association, is located in New York City.

It shares a conference room in the same office building on the same floor with the American Institute for Imported Steel.

The two groups share members and even share a few directors, a spokesman for the Importers & Exporters Association has said.

The American Institute for Imported Steel represents firms that handle an estimated 50 percent of the imports here from Europe and 30 percent of the imports from across the world.

Last August dumped steel, steel sold at or below cost, much of it from Europe, amounted to about 25 percent of the apparent supply of steel in the United States.

In September it was about 20 percent.

In October, the most recent month available, it was around 22 percent.

As a result, 60,000 American steelworkers are laid off.

Another 20,000 are on short workweeks.

And CWT has zealously and forcefully opposed the steel trigger price mechanism in its newsletters and activities.

The trigger price mechanism was established to expedite the functioning of internationally agreed-to mechanisms meant to prevent predatory nations from engaging in trade war or using the tactics of trade war.

CWT consistently scolds American steel as an example of those big and fat, and lazy industries grown too slothful to compete.

CWT anguishes in its worry over what effect the EPM has on U.S. consumers.

Said CWT in a recent newsletter:

> We are extremely concerned that little is being done to do away with the long-term protectionist policies afforded to steel and other industries we discuss in this newsletter.

Yet CWT is reliant for its continued operations on a loan from the American Importers Association, now renamed Exporters & Importers, which includes steel importers in its membership.

But CWT's newsletter does not disclose this.

In addition, CWT president, Doreen Brown, sits on the International Steel Advisory Committee of the U.S. Trade Representative as the consumer representative.

I think that CWT's connections should be listed on its letterhead and its newsletter right beside the list of former State Department officials and distinguished professors and think-tank scholars that make up its public-interest board of directors.

However, this is but one step beyond the looking glass and a look at one prop, Mr. Speaker.

There are many more.

If you get a list of CWT's corporate contributors, and corporate donations make up more than half the budget, you will see the Automobile Importers of America high on the first page.

The Automobile Importers of America represents the American arm of every Japanese and European automaker doing business here with the exceptions of Volkswagen and Mercedes-Benz.

It includes Honda, "We Make It Simple"; Honda which sold 375,338 cars here in 1980.

It includes Datsun, "We Are Driven"; Datsun which sold 516,864 cars here in 1980.

And it includes Subaru, "The Official Vehicle of the U.S. Ski Team"; Subaru which sold 142,969 cars here in 1980.

The five best known Japanese manufacturers sold 1.8 million automobiles in the United States in 1980.

So it is not unreasonable to wonder how CWT stands on the automobile truce negotiated with Japan earlier this year.

CWT opposes it; opposes it zealously.

One of CWT's board members, a distinguished former diplomat, analyzed the agreement in a newsletter.

His analysis came very close to self-righteously applying the labels "Racist" and "Zenophobe" to those whose pressure brought about the truce.

"The truce is nothing but an updated version of the discredited and odious Oriental Exclusion Act," he said bitterly, refusing to acknowledge any validity to concern about American workers.

And he concluded, and I quote directly:

> I do not see how this unseemly episode can possibly brighten the American image or benefit the national interest.

The national interests represented by the Automobile Importers of America, whose contribution helped publish this diplomat's views, also includes a group of foreign tiremakers as well as 17 foreign automakers.

It even includes the European automaker who uses U.S. television to tell American consumers they are being treated like bozos.

I do not know how much money the automobile importers gave to CWT to represent the enormous stake of the working American consumer, including consuming automakers and steelmakers, in the rigged and one-way trade we have today.

But the New York Times recently reported that Toyota has given $7,500.

And that Subaru chipped in $15,000 by paying CWT's $10 membership dues for 1,500 American employees connected to Subaru's operation.

Between Toyota and Subaru, the total is $22,500, Mr. Speaker.

Since CWT President Brown previously has estimated her budget at around $100,000, those two automakers alone are in the 20 percent category.

But we have more steps to take if we are to cover the ground.

CWT's 1979 report to the IRS indicates that it took in only $6,430 in individual membership dues in that year.

This means there were only 643 members in 1979 before the membership drive that took in employees of Toyota and Subaru and Lord knows who else.

CWT's membership is estimated at about 3,000.

This means that about 20 percent of CWT's individual membership has a reasonable chance of being unconnected with importers or exporters.

I am beginning to suspect that the stake of some consumers in the one-way trade of today is more enormous than the stake of other consumers.

It is not my intention to make the Congressional Record resemble the front page of an investigative newspaper, Mr. Speaker, but we have several more props to review.

My freedom of information request to the IRS on this civic league brought forth notification that there is no record of a 1980 return on file and no record that an extension was requested or granted.

Therefore, there is a possibility CWT faces $10 a day penalties for not filing as required.

This is a relatively small matter, but one of CWT's themes is that any consideration shown to American producers who are being victimized by the tactics of trade war is really a subsidy paid by the American consumer.

However, the CWT prospectus tells potential corporate givers that their gift may be deductible from their U.S. Federal income tax as a business expense if it is made with the reasonable expectation of a commensurate financial return.

Business expense and financial return are the key words there, Mr. Speaker.

Those who give have got to expect something green and tangible in as a result.

And CWT may owe at least $3,100 to the IRS, possibly double that, if they did not file in 1980.

It seems to me that one question to be asked is this: Who is subsidizing whom?

Nevertheless, CWT is active and vocal on many issues other than the trigger price mechanism and automobiles.

It may be that things are as CWT President Doreen Brown says, that the corporate contributions come because the givers simply have a wide and general common interest with the group.

Let us take a look at that, at a few issues.

CWT opposes, but grudgingly accepts, the multifiber agreement on textiles.

CWT opposes any quotas on meat imports.

CWT opposes any relief for U.S. shoemakers.

In this review, we need to go back to the American Importers Association, now renamed the Exporters & Importers Association.

The association is divided into four working groups, or was.

There is the textile and apparel group, which might have an interest in the multifiber agreement. This group is represented by a Washington law firm that is listed as representing Japanese and Korean and Italian steel and foreign chemical manufacturers and many others engaging in trade.

The parent association has a meat products group, which might have an interest in meat imports. This group is represented by a Washington law firm that seems to specialize in representation for food products importers.

By the way, meat experts tell me our Japanese trading partners rigidly limit the amount of American beef they will take and place a stiff duty on what goes in.

The Japanese duty is 25 percent based on the cost of transportation as well as the cost of the product.

Beef sells for about $20 a pound in Tokyo, they say. It is a pity no companion group represents the Japanese consumer before the Ministry of Industry and Trade.

Meanwhile, the Europeans place a uniform 20-percent duty on imported meat and openly discuss what measures will be necessary to make them 95 percent self-sufficient.

Then there is the footwear group of the American Importers Association, which might have an interest in shoes. This group's Washington law firm seems to specialize in South American leather processors and Japanese heavy industry, including steel in most of its forms.

And last, there is the work glove group. Their Washington law firm seems to represent Japanese industry and European automakers and a meat importers group.

If you remember the things CWT opposes, it begins to appear astoundingly uncommon just how many common interests CWT shares with its corporate angel, the one with the outstanding loan.

Nevertheless, CWT operates on an austere budget.

It is staffed by only one full-time employee and interns. Its board and others give volunteer time, generally 1 day a month.

Yet CWT publishes a very thorough and knowledgeable newsletter that runs up to 12 and 16 pages and covers almost every pending issue in trade.

Read a CWT newsletter or other literature.

You are struck by how very concerned CWT is with keeping U.S. markets wide open and how little concerned it is with barriers that exist to American goods in Japan and Europe.

Could it be that those thorough and informative newsletter articles and bulletins are ghost written by Washington lawyers who have a little time on their hands?

By the way, CWT President Brown also sits as a member of the Importers and Retailers Advisory Committee of the Department of Commerce.

CWT has expressed concern about the orderly marketing agreement on television sets.

Panasonic is on CWT's contributions list.

Also on that list is a group called NEC of America.

NEC stands for Nippon Electric Corp., I suspect. It is a vigorous competitor in the American communications industry. The Japanese recently have opened their communications industry somewhat to U.S. competition, but results are slow to be seen.

There are a few other steps I could take, Mr. Speaker, but our walk through the looking glass has been longer than I planned.

I have not spoken at such length on CWT because I wish to condemn the group or its activities or its supporters, Mr. Speaker.

Commerce makes the world go around and we must compete.

As for CWT, they have been absolutely open when asked. Much of the information contained in my remarks was provided by the group either directly or indirectly, and it deserves praise for that forthrightness.

In these remarks I have raised questions and it is only fair that Mrs. Brown's answers not go unnoticed.

Mrs. Brown asserts that the financial support given the group has absolutely no influence on its positions or the issues it chooses or the newsletter.

She says she writes the newsletter herself and spends long hours on it.

She notes that contributors are not members and do not elect directors or set positions. She says that there are no foreign firms among the contributors. That those with foreign connections are nevertheless U.S. operations employing American workers.

The only guiding principle of the group is what is best for American consumers, she says.

And she emphatically says the IRS is in error.

I ask the House to remember that I speak as chairman of the Congressional Steel Caucus, and I remind the House that our primary concern is the continued viability of the American steel industry.

These remarks have been based on the belief that the more we in Congress know about those with whom we are dealing, the closer to right and proper will be the difficult decisions we must make.

Therefore, I will not be offended if some choose to take this information with a grain of salt as long as they remember you shouldn't always judge a newsletter by its content.

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Mr. MURTHA. Mr. Speaker, will the gentleman yield?

Mr. GAYDOS. I yield to my colleague, the gentleman from Pennsylvania.

Mr. MURTHA. Mr. Speaker, the steel industry's ambitious modernization plan is jeopardized by the cheap imports flooding this country. The Congressional Steel Caucus has made progress on tax and environmental proposals before Congress, but the import situation is eroding these successes.

We have supported three specific tax measures: Accelerated depreciation, a refundable investment tax credit, and an additional 10 percent targeted investment tax credit for companies investing in economically depressed communities. This kind of legislation would encourage modernization, increase productivity, and help relieve pockets of unemployment in our older industrial cities.

We have also supported legislation that would grant a 3-year stretch out period for environmental expenditures to comply with our clean air standards. This time would allow reinvestment in new technology and equipment, rather than additional pollution control equipment. We feel this type of regulatory relief will impact favorably on the steel industry's capital investment program and modernization strategy.

While our trade and environmental policies are moving forward to help make steel strong again, the future of steel also relies on fair trade. As David Roderick recently noted, the domestic steel industry can be seen as a three-legged stool; supported by tax, trade, and environmental policies. No matter how strong our tax and environmental policies are, the stool cannot stand without an equally strong, third leg. The injury caused by unfair import competition makes the further decline of the steel industry seem inevitable.

The toleration of foreign-subsidized steel dumped at prices below the cost of production is neither a sound nor fair basis for stable trade relations. This market disruption also impedes any of the impact new tax and environment policies may have.

Import penetration of the U.S. market is reaching historic levels. This injury translates directly into unemployment, which has hit 15 percent of the industry's work force.

The increased burden of cheap imports falls directly on steelworkers. The average rate of unemployment in my home district is almost double the jobless rate nationally, because for every one steel job lost, three ancillary jobs are at stake. This injury will continue as long as dumping by foreign producers in tolerated in the United States.

In terms of defense, these illegally cheap imports can only lead to dangerous dependence on foreign sources of steel as U.S. capacity is displaced. If we are to move ahead with our plans to rebuild our defense capabilities, a viable domestic steel industry is necessary. This cannot happen if we continue to allow subsidized imports to penetrate the U.S. market.

Our first step in correcting these detrimental conditions is to focus attention on the import problem through our special orders today. Our second step is to renew our call for a summit meeting to be held with the administration, Members of Congress, industry, and labor officials to discuss imports and general trade policy issues. We need a cooperative effort to address this critical situation.

Mr. GAYDOS. Mr. Speaker, I wish to respond to my colleague, the gentleman from Pennsylvania (Mr. MURTHA), who has been so active on the executive committee of the Steel Caucus. I want the record to show that we had 11 members there early this morning; we spent over an hour there. I commended and complimented the group as the chairman of the Steel Caucus for their dedication to the problems we have seen over the last 4 or 5 years.

I congratulated them and thanked them for their dedication over the 5-year period and for what they have accomplished.

I think the Steel Caucus speaks for itself. I refer the Members to the words of one who has been around these Halls for a long time, a colleague of ours, the gentleman from Alabama (Mr. BEVILL), who on several occasions has reiterated his feeling. He has said he has never seen a more active and effective, forthrightly effective, caucus in the time he has served in the House. I think those words, coming from such a Member with such a long record of service here in the House of Representatives, are meaningful.

● Mr. RITTER. Mr. Speaker, I am pleased to join with my distinguished colleagues on the House Steel Caucus Executive Committee to discuss the concerns and continuing problems facing the domestic steel industry. The main reason for this special order today is to focus on the situation created by massive dumping of steel into this country's markets at the expense of thousands of domestic jobs. When you realize that foreign imports result in one steelworker out of work every 9 minutes of every day, of 1981, including Sunday and holidays, it puts the picture into agonizing perspective right away.

I represent an area dependent on the health and vitality of the American steel industry, and am proud to have the Bethlehem Steel headquarters located in my congressional district, Pennsylvania 15th. We have seen significant relief provided to revitalize the steel industry over the last year. For example, Congress passed a steel stretch-out bill which extends the compliance date to meet clean air act mandated environmental standards for steelmaking facilities in order to spur modernization. This bill, which was signed into law last July, was supported by labor, industry, and environmental groups. It is interesting to note that despite their financial difficulties, the Nation's steel companies have increased their rate of modernization. A dramatic number of new projects have been announced or undertaken during the last year despite the generally unfavorable economic environment. At the same time, the steel industry has made progress in cleaning up the environment. Since the key environmental laws were enacted, most of the steel industry's major pollution sources have been brought under control.

At the end of 1979, the steel industry was controlling 98 percent of its airborne particulate emissions and 91 percent of its water pollutants. By 1982, as required by the Clean Air Act, the steel industry will be removing 96 percent of its airborne particulate emissions. By 1984, under requirements in the Clean Water Act, the industry would control over 99 percent of its water pollutants.

This year the steel industry also enjoyed significant tax reform as the Congress passed the Tax Incentive Act of 1981. This measure included the much desired and needed Capital Cost Recovery Act. The new law replaces the present asset depreciation range system (ADRS) with accelerated cost recovery system (ACRS). This will allow steel industries to write off their assets over a period of 3, 5, 10, or 15 years. In addition, the new law raises the regular investment tax credit for used property to $125,000 for 1981-84 and to $150,000 in 1985, extends the carryover period of unused investment credit to 15 years and provides an election to expense the cost of new or used personal property.

Depreciation rules for leased assets are also liberalized, in order to encourage profitable businesses to lease assets to distressed industries who would not benefit from ACRS because they have more tax deductions than taxable income. This liberalization will enable unprofitable firms to modernize their plant and equipment. Under the new rules, businesses that grant such leases may borrow up to 90 percent of the cost of the assets and remain eligible for the depreciation allowance. All of these depreciation provisions are retroactive to January 1, 1981.

Unfortunately, with all the advantages this new direction has provided, because of the massive imports pouring into this country, the industry is still fighting to keep its head above water.

In the words of chairman of Bethlehem Steel Corp., Donald H. Trautlein, on the October 1981, steel import levels:

> It is obvious from the October figures that steel imports are still a major problem for American steel producers. More than 1.87 million tons of steel came into the United States in October and took over 22 percent of the domestic steel market.
>
> While steel imports continued at the high levels of recent months, the domestic steel industry's rate of capacity utilization last week fell below 60 percent. As a result, operations have been reduced and over 30,000 American steelworkers remain on layoff. The loss of business to enormous tonnages of dumped and subsidized foreign steel is intolerable and must not be allowed to continue.

Mr. Speaker, I share the concerns and sentiments of Mr. Trautlein with regard to the impact of foreign imports on the domestic steel industry. The American steel industry supports an open world trade system. Foreign steel should have an opportunity to compete in the American steel market so long as it is fairly traded. The industry has been a supporter of the Tokyo Round Trade Agreement involving more than 100 countries, which reduced tariffs and promoted efforts to remove nontariff barriers.

Domestic steelmakers believe they are the principal low-cost producer for the American market. But the United States, the only major open steel market in the world, cannot ignore the penetration of unfairly traded imports. Heavy flows of such imports cripple the domestic industry and undermine its capability to continue as the principal supplier of steel for this market.

Steel companies are making progress in their efforts to modernize and become more competitive. Government policies appear to be headed in a direction which could speed progress. However, what has been done is merely the beginning. Much more needs to be done—by the steel companies through the installation of more modern facilities and by Government in the form of policy changes.

Unfair steel imports transfer to American steel producers and workers the unemployment and adjustment problems that foreign producers and their governments are seeking to avoid. Enforcement of the U.S. trade law through the trigger price mechanism (TPM) is the most effective answer to the problem and is essential to the industry's revitalization program. Recently, Mr. Donald Trautlein appeared before the Senate Steel Caucus and discussed how the import situation impacts on the Bethlehem Steel Corp. I would like to share his remarks with my colleagues and include his statement in the RECORD at this time.

Statement of Mr. Trautlein follows:

STATEMENT OF DONALD H. TRAUTLEIN, CHAIRMAN, BETHLEHEM STEEL CORP.

Under the terms of the Trigger Price Mechanism, as revamped and revised a year ago, activation of the surge provision depends on two conditions.

First—that the domestic industry be operating at no higher than 87 percent of capability.

Second—that imports be accounting for at least 15.2 percent of domestic consumption.

Both conditions are being met. Currently the domestic industry is operating at about twenty points below the 87 percent level. And, over-all imports' share of the market has been clearly in excess of 15.2 percent for six consecutive months, beginning in April.

The damaging effects are by no means confined to a few products, a few geographic areas, and a few markets. The injury is pervasive and widespread.

Bethlehem Steel has a particularly large stake in the heavier end of the steel product line—plates and structural shapes. Quite unlike the situation with oil country tubular goods, there is no shortage of domestic capacity to produce plates and shapes. Yet—look at what's happened in those product areas.

As for plates, imports captured 21 percent of the market in 1980, and declined to 19 percent in the first quarter of 1981. The surge began in the second quarter of this year. Plate imports increased to 25 percent of the market, and then to 30 percent of the market through the third quarter.

The pernicious effects at a time of weak domestic demand are quite obvious. For example, two weeks ago we were forced to shut down our 110-inch plate mill at Burns Harbor—a world-class mill that's the most modern of its type in the nation.

That mill went back into operation today, but only because of the indirect effects of a large order for plates for a major line pipe project. For the foreseeable future, it will be operating at far below its full capability.

On October 23d we announced the temporary shutting down of both the 60-inch and 160-inch plate mills at our Sparrows Point Plant, increasing the number of workers on layoff from 450 to about 1,350.

There's been a similar pattern in structural shapes. Imports' share of the market was 26.7 percent in 1980, declining to 24 percent during the first quarter of 1981. It rose to 33 percent in the second quarter, and 33 percent in the third quarter.

Again, the general economic slowdown has been a contributing factor, but it is clear that unfairly traded imports have made a bad situation much worse.

As I said, plates and shapes are particularly important to Bethlehem, but they are more than that. They are essential to major capital spending projects throughout the economy as envisioned by the Reagan economic program.

Those products are emphasized in the $750-million modernization program we announced several months ago. That program includes modernization of our structural mills at Bethlehem, Pennsylvania, and the plate mills at Sparrows Point, Maryland—including installation of a continuous slab caster that will support the plate mills.

It's a paradox—a potentially tragic paradox—that badly needed modernization is now threatened by a flood of imports on top of a lagging economy. This is precisely the kind of condition that the surge provisions of the TPM were designed to alleviate.

It is true that Bethlehem, along with some other steel producers, registered improved earnings in the third quarter. Bethlehem's return on equity was 11 percent, compared with only 9 percent for the first quarter of the year. That's the good news. The bad news is that our 11 percent return compares with an average of about 17 percent for all domestic manufacturing companies.

How can we attract sufficient funds for investment, or generate funds internally, when the cost of capital is higher than our return on equity?

We'd be in much better shape today if imports hadn't taken such a big bite out of the available business during the third quarter.

If third quarter imports had been held to 15.2 percent—the upper limit of the TPM surge provision—they would have totalled 4 million tons instead of 5.6 million tons. The added 1.6 million tons of business for the domestic industry would have significantly improved the incremental profitability of our operations.

I estimate that Bethlehem would have shipped an additional 230,000 tons. At our 1981 rate of operations, those incremental tons would have been especially profitable—about $150 a ton, pre-tax. In other words, those 230,000 tons we should have had, but didn't, could have yielded an added $35 million in pre-tax profits before taxes—in a single quarter.

On a sustained basis, the potential profits currently being lost to imports could go a long way toward making our planned modernization program a reality.

But, as things stand, that program is in jeopardy and thousands of steelworkers are suffering real hardship. Of the 50,000 or so steelworkers Mr. De Lancey mentioned as being on layoff, about 6,500 are Bethlehem employees. We want to put them back to work!

I estimate that, were it not for the 230,000 tons of business we might otherwise have had, but didn't, between three and four thousand of those people would have been working steadily during the third quarter.

The near-term future prospects aren't encouraging. Even more layoffs are likely, and there's no question in my mind that imported steel is a prime culprit.●

● Mr. **FORD** of Michigan. Mr. Speaker, the recent filing of law suits against various foreign governments because of their unfair subsidization of steel exports to the United States has once again brought a critical question into sharp focus. How long can this Nation sit idly by while its industrial base is crippled, bled away, or transported wholesale out of the country? When will this Congress wake up and see that our national security and prosperity depend on a healthy manufacturing sector and that the trend toward a service economy must be checked if it is not to lead to disaster?

Steel imports have more than doubled since March of this year, flooding our markets and leading directly to the layoff of thousands of American steelworkers and the shutdown of numerous plants and blast furnaces. The situation is particularly dangerous because the American automobile industry is suffering from another flood of imports. The result is a double whammy for steel companies, their employees, and the communities in which they reside. Fifty-five thousand steelworkers are on layoff, and 17,000 more are working short weeks. McDonalds now employs more workers than United States Steel. Whatever one may think about the inevitability of the service economy, I think that we can all agree that America will be neither strong nor prosperous when it becomes a nation of people serving each other hamburgers.

The Reagan administration, like the Carter administration before it, has refused to tackle the import issue head on. Mr. Stockman will argue that our industries are uncompetitive in the world market because of the good wages paid American workers, and he would have those wages reduced or frozen. But this ignores two key facts. First, there is no single world market: every country constitutes a separate market, and few, if any, of these markets are truly free. Second, the extent to which foreign governments subsidize the wages of their employees is ignored by people like Mr. Stockman and, indeed, by the American media. For example, labor costs in America are higher than those in Japan because American steel companies pay for their employees' health benefits: In Japan health benefit costs are socialized, supported by a national health care system. American steel companies fund special unemployment insurance programs for their employees: the Japanese Government pays for such programs in Japan. In France, the government not only pays health, unemployment, and training costs which would be paid by private companies here, but the French Government is nationalizing two of its major steel companies and has directly subsidized several smaller steel companies.

The answer to import competition of the magnitude and nature facing us today is quotas in steel and content legislation for automobiles. Twenty-five percent of the steel sold in the United States is imported; 30 percent of the autos sold here are imported. Voluntary restraints, surge mechanisms and the trigger price mechanism have all failed.

We need to take action to guarantee the survival of a strong steel industry: our national defense and economic security depend on it.

The Reagan tax policies, justified as a means to spur capital investment, will be meaningless if the companies which were meant to take advantage of them close their older facilities instead of renovating them, abandon the field to subsidized imports from foreign nations, and move into unrelated fields such as oil, mining, newspapers, and pharmaceuticals. We need a Government policy that recognizes the need for a solid industrial base and sets out to preserve it.●

● Mr. **LUNDINE**. Mr. Speaker, a vibrant U.S. steel industry is essential to our industrial base and to our national defense. As a result, we must be concerned over the development of several factors that have coalesced since the end of World War II to cause the emergence of a world steel industry. The development of a world iron ore market, improvements in the world transportation network, and new technology have made it possible for any nation in the world to become a steel producer. As a result, the world steel industry today is very competitive, giving heightened importance to the role of the rules governing our international trading system.

Import penetration of the U.S. carbon and specialty steel market has been increasing steadily over the past two decades. U.S. imports increased from 3.3 million tons in 1960 to a record 21.1 million tons in 1978. Even though world steel demand more than doubled over the past two decades, U.S. steel production has increased by only 20 percent.

The conscious effort by several countries, Japan in particular, to develop their own domestic steel industries to cultivate for the export market has hampered the ability of U.S. industries to expand and modernize. The effort by foreign countries to develop steel production capacity has been coupled, in many instances, with the use of unfair trading practices, which have resulted in dumping in U.S. markets. We need, therefore, to develop a policy to reindustrialize our domestic steel industry and to insure that our domestic steel producers do not fall prey to the unfair trading practices of our international competitors.

Development of a reindustrialization policy for the steel industry will require the collaboration of industry, labor, and Government. We had what I believed to be a productive start toward this type of cooperation with the Steel Industry Tripartite Advisory Committee begun during the last administration. I was disturbed to learn that the Reagan administration has decided not to proceed with this committee, and would urge that the administration reconsider its decision on this matter.

There is no better way to gain an understanding of the problems plaguing the U.S. steel industry from unfair trading practices than to examine the specialty steel segment of this industry. Unlike the carbon steel industry in the United States, which faces a major modernization effort in their plants, the U.S. specialty steel industry is modern and efficient. A study completed by the Office of Technology Assessment in 1980 found that the U.S. specialty steel industry is highly competitive with its international competitors.

However, the specialty steel industry is being hurt by unfair international trade practices that are enabling import penetration into U.S. markets that should not be occurring. Import penetration of the domestic specialty steel market rose from 28.16 percent in the first quarter of 1981 to 32 percent in the second quarter. By August of this year, imports rose to 41.6 percent of the market.

The trend reflected in these figures is no accident. Foreign specialty steel producers are being subsidized by their governments. Subsidization is occurring through forgiveness of producers' debt, preferential loans for expansion and export assistance, loan guarantees, inventory financing, preferential utility or freight rates, and raw material subsidies.

Subsidization of this type is counter to the agreements that have been arrived at under GATT through international negotiation and agreement. Last week, U.S. specialty steel producers and labor filed a petition with the U.S. Trade Representative's office seeking relief under section 301 of the Trade Act for the impact on their industry from foreign subsidization. Prompt and meaningful consideration should be given to this petition by the administration, and mechanisms to provide protection against this type of unfair trade practice promptly developed.

The mechanisms that have been developed in the past have proved unresponsive to the needs of our domestic industry and ineffective in curbing unfair trading practices. The trigger price mechanism, while only applying to a few selective categories of specialty steel, has not been effective in stemming dumping. The surge mechanism instituted for specialty steel to deal with dumping and foreign subsidization has not resulted in Government efforts to deal with what is a growing concern among specialty steel producers over foreign subsidization.

Without an effective international trade policy for the specialty steel industry, U.S. domestic producers will find it increasingly difficult to maintain their technological superiority and competitive stance vis-a-vis foreign producers. We have already witnessed the erosion of the industrial base for the production of carbon steel and cannot afford to let this occur in specialty steel as well.

We need a national steel policy that will give rise to the reindustrialization of domestic carbon steel production and which insures fair trade for both carbon and specialty steel. The administration, in cooperation with labor and industry, should work toward the evolution of such a policy. Congress must work toward implementation of changes in current tax and environmental laws to complement these efforts and insure that the financial and regulatory tools are available to accomplish our goal of a healthy, productive U.S. steel industry.

Because of my particular interest in the question of specialty steel, I intend to ask my colleagues to jointly sign a letter to Trade Representative Bill Brock urging that he take prompt and meaningful action on the petition which has been filed jointly by specialty steel companies and unions representing their workers.

We have a precedent with the import quotas imposed from 1976 to 1979 which clearly demonstrate that such action was not inflationary and that prices did not rise during this time of relief for the domestic industry. Rather, the U.S. specialty steel industry invested substantial sums in improved productivity and became more competitive during this period of time.

We must act together in Congress and the administration to assure that our industry, which is vital to the national defense and important to economic recovery, enjoy an environment conducive to its growth and further progress.●

● Mr. YATRON. Mr. Speaker, I rise today to join my colleagues in addressing the issue of steel imports. I want to focus my remarks specifically on the specialty steel industry.

The U.S. specialty steel industry is recognized as a highly competitive American industry essential to the national economy and defense. Specialty steels are designed and produced for applications in extreme environments demanding special hardness, toughness, resistence to heat, corrosion or abrasion.

Some examples of industries producing essential goods and services for the national economy and defense which are dependent upon specialty steels are the following: The electrical power system, the aircraft industry, semiconductors, food processing, transportation systems, marine equipment, petroleum processing, and chemical processing.

Unfortunately, subsidized and dumped imports of foreign specialty steel present a critical challenge to the future of the domestic industry. Specialty steel imports are not covered by the trigger price mechanism, with the exception of stainless wire. However, in 1980, the Carter administration announced a surge mechanism for specialty steels because of concern about such imports. Administered by the Department of Commerce, this program is designed to alert the Government of surges in specialty steel imports. These surges may indicate unfair trade practices resulting from foreign dumping or government subsidies. If the Commerce Department finds evidence of dumping or subsidization, appropriate legal actions can be taken against foreign producers.

Despite the good-faith efforts of the Department of Commerce, the surge mechanism has not proved effective to deal with the import problem. Imported specialty steel is taking a growing share of the domestic market. In the second quarter of 1981, import penetration rose to 32 percent of the domestic specialty steel market, up from 28.16 percent in the first quarter. By August, imports rose to 41.6 percent of the market. At the same time, capacity utilization by domestic producers dropped to 32 percent during the second quarter from 33 percent in the first quarter.

The present unemployment rate in the domestic specialty steel industry is over 21 percent and increasing weekly. In addition, Bethlehem Steel, a substantial producer of tool steels, has announced their complete withdrawal from that market and has described imports as a major factor in their decision.

It appears that the situation will only worsen unless the Government, in coordination with the industry, takes positive and aggressive steps to correct the problem of unfair foreign trade practices. The vast system of Government subsidies to foreign specialty steel producers is a violation of American and international laws. The industry has filed a case under section 301 of the Trade Act of 1974 with the Office of the U.S. Trade Representative. I am confident that this case will be reviewed favorably and will lead to greater action with respect to unfair trade practices. The specialty steel industry will survive and prosper if it is allowed to compete on an equitable basis. It is up to our Government to provide the necessary competitive safeguards.●

● Mr. BROWN of California. Mr. Speaker, it is with regret that I rise to speak on the steel trade issue. I rise with regret because I have had to speak on this topic too many times over the last few years. I have had to deal too often with layoffs at the Kaiser Steel plant in my district, layoffs due primarily to excessively high rates of import penetration in the Western steel market. I have seen solutions offered and promises of action by the Federal Government come to nothing.

I am at a point of extreme frustration, a frustration shared by my colleagues who have spoken today and those who will speak tomorrow. I hope that the discussion today and tomorrow will show my colleagues and members of the administration the need for some positive action on the steel trade issue.

I would like to share with my colleagues some of the reasons for my strong feelings on this topic. In 1974, the late Congressman Pettis and I formed a Steel Caucus to deal with the problems which we were experiencing on the west coast. With only one mine-to-metal steel facility on the west coast—the Kaiser plant at Fontana, Calif.—national policy on steel imports did not adequately deal with our regional concerns. Together, Congressman Pettis and I effected some small changes in the Trade Act of 1974 to deal with our concerns. Now, I am sorry to say, the import problems which affected us on the west coast are national in scope.

Basically, the Western steel market has had import rates at twice the national rates. This is due to the relatively small rate of steel production in the region, causing imported steel to fill the gap in demand. When national steel import rates increase, the west coast experiences even higher import levels since the importers are already in place there. For example, this year the national steel import rate for the first 9 months of this year is 18 percent. On the west coast the figure for this same period is pegged at 46 percent, well above our usual doubling of the national rate.

This situation has caused Kaiser Steel to have to do a better job of competing with foreign producers. Kaiser invested $200 million in a major plant modernization effort. They installed a continuous casting facility, a technology which is one of the most modern available and one which people point to as providing the Japanese with a competitive edge. They aggressively sought markets by concentrating their production on energy-related areas, producing pipe for oil and gas pipelines. They engaged in an aggresive battle with foreign producers and still lost money.

The reason for this continued loss was the fact that the foreign producers were bringing steel into this country at subsidized prices, below the exporting country's cost of production. National import penetration increased and the Western steel market had twice these rates.

Then we saw the trigger price mechanism (TPM) instituted to deal with the dumping of foreign steel in our country. The TPM set minimum import prices for steel based on cost of production, freight costs, and a modest profit allowance. However, the TPM uses Japanese cost of production and Japanese freight rates to the United States. What this means for the west coast is that, since it is closest to Japan, it has a lower freight cost component and has the lowest TPM level in the Nation. As soon as the TPM went into effect, the west coast was flooded with imports as foreign steel producers sought the lowest cost entry point into the United States.

One clear indication of the west coast being used as an entry point for imported steel is the fact that while the Western steel market accounts for only 8 percent of the national market, 20 percent of our national steel imports come in through the west coast. This shows me that my suspicions about the TPM levels on the west coast having had a detrimental effect upon our region are correct.

We now have European steel flooding the western market and European steel service centers being set up on the west coast. We had not had much European steel on the west coast in the past, and I think that any rational person would agree that the west coast would not ordinarily be a natural market for European steel. We can only assume that this is a result of problems with the setting of the TPM levels on the west coast.

Many of us representing Western districts have tried to get this transportation differential problem corrected. We have not met with much success and the TPM formula remains based upon Japanese production. I am reluctant to advocate the abolishment of the TPM program, since it has had some beneficial effects and Kaiser Steel would be worse off without the TPM. What I would like to see is recognition of this inequity in the TPM formula and some serious steps taken to correct this problem.

But there are other anomalies on the west coast which have contributed to problems there. We have a great number of steel centers on the west coast, and many foreign producers are buying into these operations. This strengthens their competitive position in the western market. There is as well a problem with these steel centers buying steel offshore and then bringing in these products, circumventing the TPM program. These related party transactions must be addressed if the situation is to improve on the west coast.

I am encouraged by the upcoming trade negotiations with the European Community. I feel that this is an excellent opportunity for the new administration to correct many of the trade imbalances with the EC which we have endured for the past few years. I hope that our negotiating team will be able to get the EC to realize the damage which their trading policies are doing to our domestic steel industry. I hope, as well, that our negotiators remember that regional injury was made a part of the 1979 amendments to the Trade Act and that any agreements that are made with the EC will have to abide by this provision. We in the Western steel market will be paying close attention to these negotiations in light of our recent experiences with European steel producers.

But any action taken with steel imports comes too late for the 3,000 workers who are being laid off at Kaiser Steel over the next few months. Because of its losses, Kaiser is having to shut down its primary facilities, its coke ovens, and furnaces. These facilities will require rebuilding in the near future but Kaiser does not have the money necessary to complete the job and still remain a viable operation.

I will not go into my feeling about the administration's cutbacks in TRA assistance and training funds at this point, programs which would have helped these 3,000 steelworkers. I will say that the jobs of the remaining workers and the health of my district's economy depends upon what we in Washington do about our trade problems. Our industry can compete in a fair and open market. A modern facility like the Kaiser Steel plant can compete against foreign producers. But this competition must be fair and not involve dumping steel in this country at less than cost of production.●

● Mr. MICHEL. Mr. Speaker, I am glad to have this opportunity to say a few words about the current problems and future promise of the American steel industry.

It is common knowledge that in recent years the American steel industry has fallen on hard times. Excessive regulation and unfair foreign trade practices have contributed to this decline.

The question facing this country is whether we have the will and the determination to see to it that the American steel industry recovers its former greatness.

That question is being answered in part by the American steel industry itself. There have been major modernization steps taken, and I have no doubt that if the steel industry gets the chance to improve its performance, it will do so. I am therefore glad that President Reagan realizes that Government policy can go far to help the steel industry to help itself. The accelerated cost-recovery provisions of the recent tax bill will be of enormous benefit in the area of capital formation, and the administration's commonsense policies on environmental regulation will also be of great help to the industry.

But we all realize that if we do not realistically address the question of foreign imports and their impact on our domestic steel industry, we will not be able to solve its major problems.

Last month, many of our colleagues in the Steel Caucus took the floor and made what I feel is an irrefutable case for enforcement of our Nation's trade laws through a strong trigger price mechanism. Such enforcement is an absolute condition for the revival of our steel industry on which so much depends, including the industrial base which President Reagan must have in order to rebuild and modernize our Armed Forces.

The American worker can outproduce any worker in the world if he is in fair competition. But when foreign nations load the dice and, through various practices, help their steel industries sell a product below cost, the American steel worker is put at a disadvantage.

Nobody is asking our Government to emulate the practices of other governments in this area. All that American steelworkers and their families are asking is that the workers be given a fair chance.

The steel industry must ultimately save itself. But realistic tax and environmental policies, plus strict implementation of antidumping laws are the job of Government. It is this kind of unity and cooperation, within the context of the American free enterprise system, that will help the American steel industry to grow and flourish once more.●

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FRONTLINE DISPATCHES FROM THE NEW STEEL WAR

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. GAYDOS) is recognized for 60 minutes.

● Mr. GAYDOS. Mr. Speaker, the penetration of apparently dumped foreign steel—steel sold at or below the cost of production—in the United States has averaged 22.3 percent for the last 3 months, and the administration now is attempting to negotiate a cease fire in this wholesale offensive against international trade agreements.

American steelmakers who had planned to initiate unfair trade cases by this date—cases which could show that our trading partners ignore their agreements and use the tactics of trade war—are withholding their complaints while the administration talks.

Meanwhile, the crisis continues.

When the congressional steel caucus first spoke on this steel war about 3 weeks ago, we had 32,000 steelworkers laid off.

Today we have an estimated 60,000.

When the caucus first spoke, we had 17,000 on short workweeks.

Today we have an estimated 20,000.

And the import clock of the steel caucus now shows one tax-paying steelworker put out of work by apparently subsidized imports every 8 minutes and 15 seconds of every day this year.

Everyday—Sundays and holidays and, soon, Christmas—of this year at the rate of 175 a day.

Last month it was one every 9 minutes . . . 160 a day.

By the way, the crime clock kept by the Department of Justice marks one murder every 23 minutes.

High in basic steel, the losses are even more dreadful in specialty steel.

American specialty steel is effecient and competitive by any standards. They simply are the best in the world at what they do.

Yet foreign specialty steel is selling here at 54 percent less than certain U.S. products.

Apparently subsidized specialty steel in the third quarter reached 47 percent of apparent supply in wire rod; and 40 percent in alloy tool steel; and 26.6 percent in stainless bars; and 11.2 percent in stainless sheet and strip.

The executive committee of the caucus has voted unanimously to support efforts of the specialty steel in-since the late 1950's—and tailor their capacity to meet their requirements by closing the obsolete and inefficient.

Can you imagine that, Mr. Speaker?

Someone has acknowledged this very important basic industry of ours is moving toward higher competitiveness.

JOE GAYDOS, the chairman of the Steel Caucus, did not say it.

Dr. Willy Korf—the man who outsmarted Krupp—said it.

But I do think he knows what he is talking about, particularly in regard to dumping and artificially maintained excess capacity and the rest of it.

Meanwhile, the Foreign Ministers of the European Economic Community—the community with 25 percent overcapacity which apparently is dumping here—have agreed to ask 14 other nations to limit their steel exports to Europe.

The list includes Japan, which has not participated heavily in the current U.S. import episode. Those nations that are exporting to Europe, if they agree to the limit, will be looking for new markets. There is only one market big enough.

Mr. Speaker, the current situation is unacceptable. The potential situation is an outrage—it would have the Europeans dumping here in violation of international trade agreements while protecting their own markets and directing to us what their barriers turn away.

Whatever it is, it is not free trade.

On the northern border the Trudeau government is pledged to carry out a program of Canadization.

This means that whatever the Government can do to limit imports and strengthen Canadian industry through buy-Canada policies, it will do.

This includes Government procurement policies and the imposition of Canadian content requirements on any project over which the Government has any authority. Provincial governments follow the same general policy. We got a good taste of Canadization in the AlCan Pipeline.

The Canadian half of this 4,800-mile pipeline was subject to certification by the National Energy Board.

The certificate went to the competitor who promised 85 percent Canadian content. And the certificate was conditioned on 85 percent Canadian content. Now, our agreement with the Canadians specified that American steelmakers would have a chance to compete for the pipe. But the Canadians rigged the specifications to allow the use of Canadian-only pipe on the mainline and then refused to waive their 15 percent duty on any other American pipe that could have been used. It made us uncompetitive. Our corresponding duty on Canadian pipe is 2.2 percent.

Their Supply Minister summarizes the policy this way:

> Wherever we can establish a competitive atmosphere or ambiance with only Canadian firms, we will invite Canadian firms.

In the area of military cooperation, he said this earlier in the year:

> Normally we buy in Canada . . . when we have to purchase outside this country—typically for specialized military equipment—we negotiate a deal with the offshore producer that requires them to spend in Canada an amount equal to the price of the purchase over the life of the contract.

This may be almost reciprocal in that what goes out comes back, but it falls short of what Smith and Riccardo had in mind. These things have the looks of barriers.

Mr. Speaker, I have saved the most difficult report for last.

It is the one from the Pacific Theater.

The Japanese have not engaged to any great degree in the feeding frenzy and predatory pricing that seems to characterize the new steel war.

European imports are up 58.2 percent for the year to date and Canadian imports are up 35.5 percent. But it is the Japanese who have of America the most disturbing view.

A joint Japan-United States economic group—collectively called the Wisemen's Group there—took a look at future trade relations not long ago and drew some conclusions.

The Christian Science Monitor—a newspaper given neither to hyperbole nor hysteria—summarized the findings.

According to the Monitor the Wisemen concluded that the trade imbalance is structural; that America is basically an exporter of raw materials for which there is limited demand; that Japan is a shipper of high-value manufactured goods, for which demand seems limitless.

Said the Monitor correspondent:

> It boils down to this: Japan has more to offer U.S. consumers than vice-versa.

Mr. Speaker. The Wisemen came very close to assigning the United States the role of colony, and that simply is not acceptable. It is offensive when you consider that it is not Japan that defends Japan, but the United States. It is one grade up the scale from offensive—it is repugnant—when you consider the deepening and very expensive military preparedness we are undertaking to defend free world oil sources and routes.

This strain on us benefits the Japanese as much—make that more—than it does the United States. The Japanese have no oil. But if this is the way the Japanese see us, it is the way they are going to try to deal with us.

Somebody had better set that straight right away.

Meanwhile, Japan's success in trade through government involvement in industrial development has given new meaning to the term "comparative advantage," and it has been done in a way that ought to have Smith and Riccardo both spinning in their graves in perfect sychronization.

However, Clausewitz—who wrote on war—would merely smile the smile of a professor who sees a bright student applying the old man's theories and making a success of it. He would be satisfied in the knowledge he taught well.

For a good example of how the Japanese blend Smith and Riccardo and Clausewitz to get what they call the Japan way, we need to step away from steel momentarily and talk about aluminum—aluminum baseball bats.

Baseball is the one thing we have been successful in exporting to Japan in a big way. And the United States has a technological lead on the world in the manufacture of baseball bats. In fact, Jim Easton, of Van Nuys, Calif., is the father of the aluminum baseball bat, and he found a big eager market in Japan in high school baseball.

He was doing about $1 million a year in business there, he said, selling through a Japanese company. "We could not make enough," he went on, explaining the ripeness of the market, "and gradually the competition—in Japan—came on." And suddenly the Hawleys over at the Ministry of International Trade and Industry decided that aluminum baseball bats needed some regulation in what they call the Japan way.

Regulation No. 1—manufacturer identification numbers should not be stamped on bats. Easton said his bats bore the numbers—called run numbers—but that the small markings did not affect the strength of the bat.

Regulation No. 2—a softer aluminum alloy is needed in baseball bats. Easton said this meant the bats could no longer be lightweight, which was part of his specialty's appeal. And he doubts the regulations were applied to his Japanese competitors with the same zeal. The result: Easton is out of the Japanese market.

Who is one of the biggest manufacturers of aluminum baseball bats in Japan?

Why, merely the company through which Easton marketed his bats when he was the technological leader of the world.

Easton believes complaints from Japanese manufacturers—and aluminum is one of Japan's distressed industries—found a friendly ear at the Ministry of International Trade and Industry, and the regulations followed.

By the way, all of this happened without hearings that involved all affected parties—American and Japanese manufacturers and any consumer groups that wanted to speak up.

Due process is a term in the U.S. Constitution.

In trade, it is the difference between the American way and the Japan way.

The only equivalent situation we could conceive here would be to allow Harley-Davidson—the sole remaining American motorcycle manufacturer—to write standards for Yamaha and Suzuki and the rest. And then wink at applying the standards to hogs.

If you have a technological product it will not last too long in the Japanese market, Easton says.

Nevertheless, a comparable aluminum baseball bat sells in Japan today for $70.

Easton estimates he could sell a better bat there for $50 with plenty of profit for everybody—his firm, the three-tier Japanese wholesale level and the retailer.

You see, aluminum requires a lot of energy, and Easton has an edge there, and according to Smith and Riccardo and the unspotted "American Book of Free Trade" he should have the market. But the heavily footnoted "Japan Book" is based on Smith and Riccardo and Clausewitz, which modifies the principle of comparative advantage and turns it into the principle of advantage any way you can get it.

Oh, yes, there is a second and very large Japanese market for baseball bats in the Japan rubberized baseball league.

The simple explanation of that league is that it is close to the way the United States approaches softball—kids and adults play it all over the country. Easton was never allowed to tap that market, he said. And here is what the managing director of the Japan Federation of Sporting Goods Retailers told the "New York Times" when asked about that market this past October:

He said, "those—trade—agreements are not applicable * * * those agreements are one thing and doing business in Japan is another."

Despite that, the Japanese have agreed to talk about the bats and about other apparent barriers to American goods because they are nervous about a projected $20 billion surplus with the United States and another very sizeable one with the Europeans. And, if they really talk about everything that will be a positive step forward. But we have to be careful because there is a possibility they are reading from a page in Clausewitz on war rather than from Smith or Riccardo.

General Clausewitz advises that—when facing a big and determined opponent—the best tactic is, "to exhaust * * * deal with small objectives because they demand less expenditure of you * * * retreat slowly and offer incessant resistance * * * yield not one more inch than the pressure demands."

Easton mentions tokenism when he talks about trying to do business in Japan. He says there is a great deal of it. Remember that Mr. Easton led world technology with the aluminum baseball bat. Therefore, extreme care and great determination and a lot of pressure from Congress had better be involved in negotiating with the Japanese in areas where we assume we lead the world in technology. And those who read General Clausewitz will recall his admonition that what an opponent's will to prevail has been today, it will be tomorrow.

Meanwhile, the "Wall Street Journal" recently reported that two Japanese trading companies handle more exports from America to Japan and other countries than do most U.S. firms.

If Mitsui & Co. qualified for a ranking on "Fortune" magazine's list of the 50 top industrial exporters, it would rank fourth, the Journal said.

I do not think Mitsui has a lot of trouble with the Hawley's over run identification numbers. Even if barriers in the first and second ranks are lowered, there may still be a problem with the Japan way and the marketing of U.S.-made consumer goods.

The potential problem has little to do with product quality. It concerns advertising.

In the United States, no watcher of televised football can sit for one quarter without seeing at least two commercials for Japanese automobiles. Once U.S. Government regulations are met—for truthfulness, for example—the field is wide open to anybody with the cash. This now is the case in Japan too, according to Americans who market there.

However, one product clearance necessary for advertising on Japanese television is the Ministry of International Trade and Industry. (MITI). And one criteria applied by MITI is what competitive effect the product will have on Japanese business and industry.

I cannot represent that this clearance criteria is used as a weapon, but it has some fairly heavy potential. And it is not one of our criteria. It would contradict importer's rights under the U.S. Constitution.

This is the present shape of things in the theaters and campaigns of the great Atlantic and Pacific trade war of the 1980's, Mr. Speaker.

I suggest it is time for Congress to wake up and get involved. Otherwise, the next reading of the steel caucus import clock may very well show one gone every 7 minutes in steel and automobiles and across the national economy.

Mr. MURPHY. Mr. Speaker, I stand before the House of Representatives today to discuss a very serious national problem. That problem is the ever increasing trade deficit and the corresponding loss of jobs and the increased social costs of that unemployment. Understand first that the American trade deficit is significant and is growing. In fact, the total trade deficit for the first three quarters for Japanese-American trade alone stood at $12 billion, with estimates of $15 to $18 billion for calendar year 1981. The most significant contributors to that deficit were automobiles and steel. Of the $12 billion trade deficit, for the first three quarters of this year, automobiles represented $8¼ billion with a 1981 projection of $10 billion. The trade deficit in iron and steel stood at $2.36 billion for the first three quarters of 1981 with an annual projection of that deficit of $3.15 billion. If the deficit in steel trading between the United States and Japan is appalling, when measured in net dollars, it is even more scandalous when we examine total dollar sales in steel between the two countries. During the first three quarters of 1981, we imported $2.7 billion of steel from Japanese manufacturers. During that same period we sold only $34 million of steel to them. Our trade deficit with respect to steel is significant on two levels. First of all, I have just documented that it is significant in terms of dollars, but we must also realize that the steel industry is very basic to all industries, and it has a level of significance that transcends the steel industry alone. It is absolutely needed for commercial and military markets. In 1978, 1979, and 1980, 16 percent of our domestic steel consumption was imported. In addition, approximately 3.8 million tons of iron and steel was imported in the form of finished cars and trucks. Japanese imported steel accounted for over half of our imported consumption and represented 8.2 percent of our total domestic usage. My district is heavily dependent on the manufacture and fabrication of steel products. Many of my constituents who formerly worked in the specialty steel industry of southwestern Pennsylvania are now unemployed. Import penetration of the domestic specialty steel market rose from 28.16 percent in the first quarter of 1981 to 32 percent in the second quarter. By August of this year, imports rose to 41.6 percent of the market.

At the same time, capacity utilization by domestic producers dropped to 32 percent during the second quarter from 33 percent in the first quarter of this year. American venture capital has previously been diverted to the specialty steel capacity and it is additionally troublesome to me that that capital commitment is permitted to lay idle while the administration worships at the alter of free trade. The figures that I have just recited for specialty steel are sad but more importantly, they are symptomatic of what occurs when an administration abandons common sense and logic so that it may worship economic philosophies that, at best, work only when they are worshipped by all nations. It would be wise for the administration to channel their evangelical fervor for free trade to the Japanese and West Germans who do not share the administration's deep convictions but who are reaping the benefits of this ill-advised trade philosophy. As a result of administration policies, imports of steel mill products for the month of October totaled 1,871,511 net tons, an increase of 7.1 percent from September import levels. For the month of September, imports as a percentage of apparent supply represented more than 1 ton in

5 and if imports were curtailed altogether, employment in the steel industry would increase by 25 percent. Certainly a goal worth pursuing. Certainly a goal that is attainable. But a goal that is not compatible with that false God, free trade. The religious fervor of the Reagan administration to free trade are especially harmful when employment figures in the steel industry are examined.

Layoff and short week statistics from 26 companies which represent about 85 percent of the industry's raw steel production capability as of the week ending November 21, 1981, are appalling. As of that date 38,282 salary and wage employees are on layoff and sacrificed on that alter of free trade. An additional 19,306 employees on a short workweek waiting for the high priests of free trade in the Treasury Department to sacrifice them next. Who can argue that our trade deficits are harmful cancers that must be eliminated? Who can argue that the net drain of dollars in such deficits is harmful to our economy and undermines the value of the dollar worldwide? Who can argue that the amount of human suffering and discomfort experience by our unemployed was an unnecessary consequence of free trade advocates who have grabbed control of the economic policies of the Regan administration? How did these imports affect our steelmaking capacity? You need look only at United States Steel and the nine major steel works that it has or will close in 1979 through 1981: Joliet-Waukegan, Ill., works, 1979; New Haven, Conn., works, 1979; Torrance, Calif., works, 1979; Fairfield, Ala., works: Plate mill, 1979; Wire mill, 1980; Gary, Ind., works, 1979; South Chicago, Ill., works, 1979; Pittsburgh, Pa., works, 1980; Youngstown, Ohio works, 1980; McKees Rocks, Pa., 1981.

Numbers of imported steel do not tell the whole story. Japanese Auto imports totaled over 2.9 million vehicles in 1980. That not only had a dramatic impact on the U.S. auto industry, but also significantly reduced demand in other related industries that can be quantified as follows: 480,000 tons of iron, 15,000 tons of zinc, 330,000 tons of plastic, 37,500 tons of copper, 30,000 tons of lead, 318,000 tons of other material, 3,255,000 tons of steel, 274,000 tons of aluminum, 135,000 tons of rubber (14.5 million tires), 120,000 tons of glass.

In 1980, the United States imported 2.9 million vehicles. Of that total, 2.4 million came from Japan, 300,000 from West Germany, and all others 185,000. Not only did this purchase represent many billions of dollars in foreign trade deficits, but the cost in lost jobs here at home is even more staggering. Those 2.9 million vehicles represented a loss of 1,244,811 jobs that can be charged off to the following industries: Prime manufacturers, 423,236; Component parts suppliers, 273,858; Raw material suppliers, 99,585; Transportation—delivery of materials and shipping of vehicles, 136,929; Nonproductive materials, 99,585; Workers employed to provide tools and dies, perishable tools and machine tools, 211,618.

Foreign trade deficits undermine our economy and cost us jobs. But there are two other significant problems created with these increased trade deficits. An increase in foreign imports is a vicious disease that feeds on itself. The massive losses absorbed by the auto industry, for example, has resulted in an extreme shortage of cash necessary to facilitize for new products and component parts. Huge losses have also accounted for the significant layoffs of the engineers necessary to design and develop these new products and components. Cash shortages to buy tooling and facilities have dictated the present and future purposes of many major component parts and assemblies from foreign sources. Increased foreign imports has a very negative effect on tax revenue and increases certain patterns of governmental expenditures beyond budgeted amounts. In February of 1978, the Library of Congress using a 1.7 gross national product multiplier, estimated that tax collections at the State, Federal, and many local level are reduced by $552 for each $1,000 of goods purchased from foreign sources rather than American suppliers. This Library of Congress estimate means that there is a $2,200 tax receipts loss for every $4,000 of imported vehicle, or $6.4 billion annually for the 2.9 vehicles we import. To make matters worse, this $6.4 billion loss does not count the added cost of unemployment compensation, trade readjustment benefits, and welfare payments which average $18,100 per auto worker and over $8,000 per supplier worker during the first year or $1.8 billion for all unemployed auto workers. Earlier, I had documented an excess of 1.25 million jobs lost because of foreign auto imports alone.

Not only is the present threat of Japanese auto imports serious, the trend for the future is ominous when you realize that:

In 1980, Japanese motor vehicle exports were almost 6 million units, up from 0.6 million in 1968. An increase of 874 percent.

In 1980 motor vehicle production in Japan exceeded 11 million units, up from 4.1 million in 1968, or a 170-percent increase.

World wide motor vehicle production increased from 37.9 million units in 1973 to 40.6 million in 1979, or an increase of 2.7 million units. The Japanese increase was 2.6 million for the same period, or 96 percent of the total worldwide increase.

Japanese iron and steel imports worldwide were a scant $1.7 billion in 1968, and now exceed $14 billion, an increase of 725 percent.

The trends shown by the expansion of Japanese sales worldwide and in the United States dictate that this administration do something to stem that tide and to demonstrate a modicum of concern for our citizens at a time when they need that expression of concern more than they have in many years. During the reconciliation process on the continuing resolutions to the 1981 budget, the Reagan administration was willing to sacrifice social security and medicaid payments for foreign aid. Little was said about that blatant disregard for the welfare of our citizens. But that callous attitude displayed to our senior citizens cannot be allowed to spread further to the people who make up the industrial backbone of our Nation. More of the same aggravates the problem. The spin off of worshipping at the alter of free trade is human suffering on a scale unparalleled since the Great Depression of 1929. Our problems will not be solved by inaction. They will not be solved by free trade, trickle-down theories, or supply-side economics. The subject of an increasing balance of trade deficit is not simply a question of free trade. We need to change our entire concept of business and the scale of industrial competition, if we are to survive as an industrial power. The real question is how long will the United States continue to allow its industrial base to be eroded? How many workers, collecting unemployment benefits, TRA, and welfare payments, will the United States allow to remain unemployed by its own industrial slippage? Where do these workers turn for future employment? How many major industries is the United States willing to give up to imported products without an attempt to provide our competitive products?

Our industries were the generous recipients of one of the biggest tax cuts in our Nation's history amid the euphoria of the supply-side advocates and the free traders. Wonderful tales of an awakening American industrial giant were told during the budget cuts and tax cut votes. In fact the opposite has been the case. Industry has earmarked less money for industrial expansion and modernization in the coming fiscal year with these tax cuts than they did in the last fiscal year without them. In fact, what had been predicted by the opponents of the Reagan program, unfortunately, has been coming true. United States Steel is using its available capital to buy an oil company rather than modernizing their production facilities. Many industries have used their tax breaks to pay record dividends to their stockholders. This is not what Congress intended them to use their additional capital for, nor is it likely that Congress would have granted a tax cut had they known what course American big business chose to take. America must embark on a bold program of modernization, retooling, and retraining. While America is in the process of becoming competitive once again there must be rollbacks of Japanese imports to pre-1968 levels. We must alter corporate income tax rates giving them every incentive for reinvestments and modernization but imposing stiff penalties for increases to stockholder's dividends or diversification. Our budget is in horrible shape. Contrary to the sales pitch in the spring, the 1982 budget shows a deficit of $100 billion. The tax reductions we gave to big business were given with the intent of future plant modernization and efficiency. If American industry does not intend to use that income for broad national purposes then that additional income should be applied to the Federal Government.

Finally, America's unemployed workers must be retrained in areas of worker shortage so that our unemployment rates can be reduced. There is not peace time road to prosperity that does not include these three elements. Our Government, unions, and management must realize that we are facing very intense international competition and that we cannot afford further slippage in any industry. There is no lasting solution that does not involve the cooperation and good will of all three sectors working together toward mutual goals. A peaceful and swift solution to our balance of trade problems and all its related maladies requires a renouncement of the religion of free trade and an embracement of the principles of what's best for our country.

• Mr. ATKINSON. Mr. Speaker, the issue of steel imports to the American steel market is a real one. The increasing levels of steel imports result in the loss of jobs for American steel workers, and the further decline of the American steel industry. Even with the provisions that were recently provided to the American steel industry to modernize their factories and revitalize the industry, the increasing levels of steel imports into this country make that much more difficult. This current trend of increasing imports only behooves us to develop a comprehensive steel trade policy.

During the 96th Congress, I proposed a bill which would have made the trigger price mechanism a matter of statutory law. By establishing this protection through an act of Congress, the proposal would have prevented the sort of events which led up to the suspension of the trigger price mechanism by the Department of Commerce. That suspension may have been seen as a sign to allow foreign producers to import steel products without worrying about selling these products at unfairly competitive prices.

I must extend this idea further by proposing that specialty steel be included in the TPM's domain. The American specialty steel industry, unlike most of the industry, is operating with efficient plants and has the capacity to be a competitive factor on the international steel scene. However, as symbolized by last week's section 301 action by the U.S. specialty steel producers, American specialty steel suffers from the anticompetitive aspects of the specialty steel industries in foreign nations. The fact that American specialty steel companies which can produce their product efficiently have to struggle to survive, while foreign governments subsidize their specialty steel companies to export their products, is a signal that we must take action to protect our interests.

The Reagan administration should be applauded for their efforts, and the swiftness with which they acted, to help the steel industry modernize. The accelerated depreciation schedule on equipment, and the steel stretchout legislation will provide our steel producers and conditions under which they can modernize their plants and can again be a competitor in the world steel market.

I urge my colleagues to consider the remarks I have made here, and I hope that we in the Congress can move ahead to assist this centerpiece of our economic system to have a fighting chance to revitalize and contribute to America's economic well-being.•

• Mr. WALGREN. Mr. Speaker, it is most unfortunate that Members of Congress have to take the floor of the House time and time again to attract the Reagan administration's attention to our sagging steel industry and the eroding effect of unfair imports.

The statistics paint a grim picture:

For the month of August, imports of foreign steel products totaled 2.23 million tons. This marked the fifth consecutive month that imports had risen. In January, imports were at 1.28 tons.

The 2.23 million ton figure represents 25 percent of the American market supply, a record high for any month.

60,000 steelworkers are out of work; 20,000 are on short work weeks.

In Pittsburgh, the number of steel or primary metals jobs is at an all-time low:

In 1976 there were 97,200 jobs; today there are 89,000. Each month this year has seen a steady drop. One spokesman told me that half of all Pittsburgh specialty steelworkers are now laid off.

This is indeed a bleak holiday season for many steel families.

President Reagan should be asked how long this Nation can do nothing while a major industrial and defense base is eaten away? When is the Reagan administration going to take action against unfair dumping of steel by foreign countries?

On October 7, the Congressional Steel Caucus wrote President Reagan requesting a meeting to discuss the problems of the steel industry in an effort to develop a comprehensive and reasonable solution to the import problem. After not receiving an answer for 2 months, we sent a second letter. Finaly, we got an answer saying that the President could not meet with us.

Two of the administration's major priorities are economic recovery and a strong national defense. It seems to me that an administration that has these goals as its rallying cry would understand that a sound steel industry undergirds our economic prosperity and national defense. It is basic.

Furthermore, a weak steel industry is costly to the American taxpayer. With more and more steel, auto, and related workers unemployed, the cost of public services—such as uemployment compensation, welfare, public health costs go up for the taxpayer. An unemployed person is not just a statistic. Unemployment means misery, unhappiness, and stress and uncertainty around the family dinner table that can be very destructive of the American family.

I believe it is critical for the administration to tackle the steel import-problem head on. Former President Carter convened the Steel Tripartite Committee, a group having representatives of Government, industry, labor, and environmental organizations. This committee conducted a thorough examination of certain aspects of the steel industry and recommended to Congress several steps we could take to help the industry modernize and preserve jobs. I believe that this approach—bringing together all the segments of our society with an interest in a healthy steel industry—is the only realistic way to curb unfair imports.

The Steel Caucus on June 6 wrote the President asking that the Tripartite Committee be continued. He answered that he does not intend to activate it, but to establish a close relationship with representatives of the industry. He described this as a more direct approach. I do not believe that the industry's problems are industry's alone, and that is why I prefer the tripartite or coalition approach involving all the parties—including Government—working together to find a mutually acceptable solution. This seems to me to be the only responsible approach.

I call on the President again to activate, reactivate, reestablish, convene—or whatever it takes—the Steel Tripartite Committee. We cannot continue to let foreign steel unemploy our people, weaken our national defense, and drain our industries and communities.•

• Mr. O'BRIEN. Mr. Speaker, the American Specialty Steel Industry though representative of relatively small producers, is vital to our economy and national defense. It produces specialty steel products usually identified as stainless, tool, and die steels, high temperature alloys, electrical, magnetic, refractory electronic, and reactive metals. Specialty steel requires a highly mechanized technology and requires more labor input than any other type steel. This U.S.

industry has proven to be the world's most efficient producer of these type steels.

Unfortunately, the American Specialty Steel Industry is being severely injured due to great influxes of imports that have substantially penetrated our market. This trend that has been increasing over the last 2 years. Dramatically illustrated by the third quarter 1981 data, which indicate the amount of import penetration per type product:

[In percent]

Product	Import penetration
Alloy tool and high-speed steels	38.5
Stainless steel:	
Bar	47.8
Wire	28.6
Rods	7.3
Sheet and strip	11.5
Pipe and tubing	58.9

The import penetration is high basically because the foreign steel is sold far below market prices, sometimes as much as 34 percent below the market price in the United States. The foreign producers can afford to sell at below market prices because their losses are made up in government grants, loans, tax rebates, and other similar subsidies.

Unfortunately, specialty steel imports are not covered by the trigger price mechanism (TPM). You may recall past administrations were reluctant to cover specialty steel products under the TPM, except for stainless wire. In lieu of the TPM, a device called a surge mechanism was designed to alert our Government of surges in specialty steel imports, thus restraining dumping and other unfair dumping practices. Essentially, a surge indicates unfair trade practices resulting in foreign dumping or government subsidization. If the Commerce Department finds evidence of dumping or subsidization, appropriate legal action can be taken against foreign producers. Nonetheless, despite the good-faith efforts of the Commerce Department the surge mechanism has been ineffective in dealing with the problem.

Obviously, this situation puts our domestic industry at a great disadvantage in the highly competitive market. The import penetration figures also translate into a serious loss of American jobs. The current rate of unemployment in the domestic specialty steel industry is over 21 percent. Moreover we have also experienced complete shut-downs as witnessed by Bethlehem Steel's withdrawal from its tool steel division. Accordingly, the Specialty Steel Industry of the United States and the United Steel Workers of America have taken its first step in dealing with this problem by filing a section 301 case, describing the array of subsidies which are illegal under the international agreements like the Subsidies Code of the General Agreement on Tariffs and Trade (GATT) and under the American countervailing duty laws. Certainly this action raises the issue of foreign subsidy and our trade problems in a dramatic way.

Hopefully, this section 301 case will push the administration into consultations with the foreign governments involved to seek curtailment or at the very least reductions in the subsidies involved. This would restore the specialty steel industry once more to a fair competitive marketplace.●

● Mr. NELLIGAN. Mr. Speaker, as a member of the congressional delegation from a major steel-producing State, and as a member of the House Armed Services Committee, I would like to express my support for restrictions on imports where such restrictions are clearly in the national interest. I believe the steel industry deserves import protection because it is the backbone of America's industry. Many other types of industry depend on steel for their very survival. A case in point is the automobile industry.

Mr. Speaker, we cannot have free trade without fair trade. If foreign governments continue to subsidize their steel industries, they cannot expect us to continue our policies of free trade. Many American jobs are at stake and, at a time when our Nation is suffering from a high unemployment rate, we simply cannot afford to be the victims of other nations unfair trade policies.

From my work on the Armed Services Committee, I know that steel is equally essential to the maintenance of our Nation's military strength. Foreign steel, which is subsidized by foreign governments, represents a threat to our basic national security because it weakens one of our basic industries. Therefore, I wholeheartedly support efforts to aid this major industry by providing import relief.

As a member of the Steel Caucus, I want to emphasize my support for efforts to protect our steel industry from unfair foreign competition. I call on all Members of the House to recognize the importance of this industry to the economic and military well-being of the United States, and I urge the fullest support of economic measures which might best protect the industry from unfair foreign trade practices.●

Mr. Gaydos. Thank you.

This means I will not dwell at length on the unfairness and bad faith and even treachery found in the practices of our trading partners.

I will move on to what U.S. trade could be if we would just quit wringing our hands in pitiful gestures of ineffective concern and start thinking and acting.

My starting point is this: The United States has the largest economy in the world and it has primary responsibility for the defense of the free world.

Foreign relations and trade and the national economy are inseparable parts of the same whole.

And, in fact, it is because they are so allied that we are having troubles. We have supported the free world economically because it was necessary in leading military alliances.

And we have not made note of the differences between us because, up until recent years, they did not make that much difference. And we do have alliances to hold together.

But now our trading partners' hammer blows of subsidies and barriers and government guaranteed and directed capital investment threaten to crack our industrial base.

If it crumbles, who then defends the free world and the oil necessary to Japan and Europe—more necessary to them than to us.

And if it falls, who then buys the endless streams of automobiles exported with tax rebates and who wears the clothing pouring out of the developing nations.

Those who consume imports will have less money to buy them with if that happens.

A nation of 220 million people—and with world responsibilities that demand a strong industrial base—is not going to do all of this just selling silicon chips and computer services no matter how attractive that theory might seem.

Nevertheless, I believe in trade.

I believe you win some and you lose some and that you have got to give a little to get a little.

But what is happening in steel indicates that we are in a trade war.

And we are losing.

And we may not have the weapons or the will to bring it to a just peace.

And this brings me to what trade policy should be.

We trade in ways that suggest we are taking the New Testament's recommended route to the hereafter in ways that reek of seeking salvation of the soul through self-impoverishment and meekness and turning the other cheek.

Well, the Steel Caucus is in the mood for some Old Testament justice, and so is the Nation. We are ready for reciprocity.

Are we faced with European trading partners who dump steel here that is made in an industry where 70 percent of the companies are subsidized or nationalized?

Yes, Mr. Chairman, we are.

Are their exports here up 50 percent?

Yes, Mr. Chairman, they are.

Did the worst of these companies lose an astonishing $13 billion in the last steel crunch?

Yes, Mr. Chairman, they did.

Would losses like this have banked the furnaces for virtually all U.S. producers?

Yes, Mr. Chairman, they would have.

Reciprocity says that a fair price for foreign steel in the United States—where steelworkers and steelmakers have to make a profit to stay in business—is one that takes these differences into account.

Nowhere in the General Agreements on Tariffs and Trade or in the NATO Treaty does it say we have to lay off our profitmaking and efficient steelworkers so Europe's subsidized and inefficient steelmakers can stay on the job. But that is what we are doing.

So we should look for ways to take these differences into account.

How do we get the information necessary to do this?

We can start by admitting to this biggest market in the world only steel made by firms and nations willing to provide it.

For those who won't or those who don't tell the truth—and only those—we could have legislated trigger price mechanisms based on the most efficient producers in their parts of the world.

This would mean a Europe-based TPM for the Europeans and a Japan-based TPM for the Japanese, for example.

This second suggestion is not far-fetched at all because American steelmakers are the second most efficient in the world at 7.7 man-hours a ton. The Japanese are first at 7.3 and the TPM is tied to a Japanese manufacturer.

But the Europeans—the source of most of the current dumping—average 12.6 man-hours a ton among the three biggest producers.

Do we have a trading partner with a generous scheme of export tax rebates on automobiles? Who will sell a car for $8,000 at home and here for $500 less?

We do, Mr. Chairman.

Reciprocity says an amount equal to the rebate is due on entry here.

Do we do anything to favor American automakers who happen to export a car?

Well, if we do, reciprocity would demand that we deduct the amount of that favor from the amount due on the rebating nation's product when it goes through Customs.

An estimated 11 million to 13 million tons of foreign-produced steel comes into the country indirectly—as automobiles and transmission towers and even things as common as clothespins.

When steel is subsidized, all the manufactured goods that require it are subsidized indirectly.

Trade policy should reflect this fact of life and deal with it.

Mr. Chairman, I understand the President's power to lower tariffs below present levels is due soon for reauthorization.

I think he should have that power. It is a negotiating tool and, if I may say so, a necessary one.

Furthermore, he should have the power to raise tariffs above what they are now when he deals with those who stubbornly refuse to see the wisdom of equal tariffs or the mutual absence of tariffs.

This would allow us to do something besides wring our hands.

Suppose our tariff on a hypothetical item is 4.5 percent. We make it and our trading partners make it. Their tariff happens to be 10 percent.

To get them to lower their tariff, all a President can do is lower ours. We go to 2 percent. They go to 9.5 percent—something in that area.

Have we won a concession or really lowered a barrier?

No.

But if a President had the power to go to 10 percent on that item, I think they would see the attractiveness and reasonableness of reciprocity.

This would make tariff adjustment a complete negotiating tool.

By all we hold dear in economic theory, Mr. Chairman, I believe we would get their attention with things like this.

And I don't think we would have to use a one of them—not a one.

The climate and the attitudes would change right away.

We could create and give legal standing to the category of Reciprocal Trading Partner. It would be a cut above Most Favored Nation.

We might even give serious thought to changing our Department of Commerce into the Department of Trade and Commerce.

The trade half of it could be given jurisdiction over anything touching on trade, even the power to conduct the portion of foreign relations that relate to trade, leaving none of it to the Department of State or any other agency.

This trade division could be staffed with trade professionals willing to work without the all-encompassing protection of civil service. Foulups could be fired.

This could make the trade division more aggressive and responsive in the cause of establishing reciprocity in trade than any arm of the U.S. Government now functioning in any field.

A division such as this might some day make headway with Japan's Ministry of International Trade and Industry.

You will see in our special orders that MITI even has the power to consider things such as the competitive effect on Japanese producers when deciding whether to let an imported product get in or remain on their market.

We discuss a case in our special orders, Mr. Chairman, where one successful American businessman was in the market and was thrown out—politely, of course. We call it the Celebrated Aluminum Baseball Bat Case. And I think you are familiar with it.

Nevertheless, I would not want our Department of Trade and Commerce to be that all-powerful.

Our Constitution would prevent it anyway, I would think.

It is one of the differences between what they call the Japan way and the European way and the American way.

Other differences include nationalization, loss of the profit motive, subsidies, barriers and government-directed capital investment programs and targeted export programs from our trading partners.

By the way, we flog our industries to export, yet the effective rate of the Eximbank recently went to nearly 13 percent. None of our export competitors requires such heavy interest as far as I know, and as far as the record shows.

If we do not find a way to handle these assaults, the big gamble we are taking to reindustrialize—so we can be more efficient—is doomed to fail.

And then even more of our economy will crumble under the blows of subsidized foreign goods and targeted export programs, and the base will further diminish.

These are only ideas meant to say that our future trade policy can recognize that there are differences, Mr. Chairman.

It should take them into account and deal with them forthrightly to establish the principle of reciprocal fee trade.

For the Steel Caucus, and for myself, thank you for this opportunity to speak on U.S. trade policy, Mr. Chairman.

In closing, Mr. Chairman, I would direct your attention, and the committee's attention, to the Industry Week at page 22, where there is an excellent discussion of specialty steel and its problems. The article talks about the areas where, because we had the hiatus and temporary restraint on specialty steel imports, they got the money to modernize. They reinvested. They became healthy again. Employment went back up.

The extra money gave us the most modern specialty steel industry in the world and the capability; this is not debated or questioned by the experts.

Now, in the face of that we have an industry, specialty steel, that faces an influx of imports that is putting asunder all that we built up through industrialization investment. Specialty steel again has over 20-percent unemployment and is heading to the all-time high of 4 years ago of close to 50-percent unemployment, even though we have the latest, most advanced technology.

So again, I think, Mr. Chairman, it does point to the fact that modernization is not the entire, complete answer. There are other factors which your committee, I know, is so familiar with and has addressed over the years.

I want to thank you very much at this time.

Chairman **Gibbons**. Thank you, Mr. Gaydos.

Mr. Benjamin.

STATEMENT OF HON. ADAM BENJAMIN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, AND EXECUTIVE COMMITTEE CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. **Benjamin**. Mr. Chairman, members of the Ways and Means Subcommittee on Trade, I appreciate the opportunity of presenting my views on U.S. trade policy which admittedly are more oriented to the Midwest manufacturer, small businessman, and industrial worker than to the thinking of Harvard, Wall Street, and Washington profundity.

The U.S. trade policy is amorphous in description, eleemosynary in character, and anachronistic in setting. In other words, whatever is there ain't very good and hasn't been for some time, is much too charitable and should be changed.

In 1979, the Congress temporarily overcame its growing concern with the trade problems of hard-pressed industries, notably auto and steelmakers, to approve international agreements to reduce nontariff barriers to trade. This member, and most members of the House Steel Caucus, supported the multinational agreement on the dialectic of free trade being synonymous to fair trade.

The principal goal of our Government since World War II has been to remove barriers to the free flow of international trade. A liberal trade policy with gobs of foreign aid has been the U.S. answer to a secure and prosperous world. Tariffs, considered a domestic matter from the founding of the Republic until the Trade Agreements of 1934, were subordinated to foreign policy objectives.

The fact that economic policy was superseded by political policy did not register while preponderance of the U.S. economic advantage lied with a liberalized trade policy. While American imports rose—so did American exports—to a greater degree. When the import and export statistics were reversed, the U.S. suddenly realized that its foreign aid had helped build competition—and that a new trend had started protectionism abroad.

A common tariff had been constructed by the European Economic Community which encouraged other trade blocks—some so subtle that penetration has been virtually impossible for the past 20 years.

This country has spent more than a half century trying to overcome the Smoot-Hawley Tariff Act of 1930. We reversed our flight to economic isolationism. The Congress delegated some of its powers to the President and a series of reciprocal trade agreements were negotiated by 1940. We proceeded with a multilateral approach with GATT in 1947. Since then, the U.S. has basically initiated every new international doctrine—all geared to open the doors of trade.

Unfortunately, the consequence of our pursuit and eagerness is that U.S. doors are open to foreign commerce—foreign doors are closed or only open sporadically to U.S. commerce.

In essence, we are not yet sure of the demarcation between foreign aid and foreign trade. We have not yet defined whether the terms of commerce—to and from the United States—should be reciprocal or weighted in favor of our trading partners to shore up other goals of our foreign policy. Finally, we haven't decided if it makes good sense politically to accept dumping and subsidization contrary to trade laws because its impact is limited to the maturing industries and the quid pro quo is unabated overseas sales of technology and electronics from growing parts of our Nation.

Mr. Chairman, the key to this dilemma is to resurrect congressional constitutional control over foreign commerce until such time as we can develop a workable economic policy which will apply to the next 50 years and not the past 50.

The second point is that we must remind ourselves that trade is reciprocal regardless of multinational agreements. We must realize that business includes the psychology of doing unto others as they would do unto you and that our perrenial role need not be to turn the other cheek—but to rationalize an eye for an eye. In other words, Mr. Chairman, we want free trade to be fair trade and that all of this country and its commerce, agriculture to industry, be treated alike by our laws and agreements. We do not want to sacrifice steel for agriculture nor do we expect that agriculture should be placed on the block for steel.

Finally, we don't expect foreign commerce to be a giveaway and that every other nation will be allowed to market its lost leaders here to the detriment of our workers. We don't expect, nor will we accept, the fact that enforcement of U.S. laws must invoke discussions abroad that enable the executive branch to look the other way while foreign firms and governments make a mockery of flaunting them. There can be no negotiation with other countries regarding the enforcement of U.S. laws. Negotiation, if any, is only acceptable if applying to agreements within the framework of existing law and if mutually beneficial.

Mr. Chairman, the American steel industry has serious difficulties. However, it has the potential to surmount these difficulties and emerge healthy, strong, and vigorous.

The Federal Government has assisted the American steel industry by lightening its tax burden and passage of the steel stretchout law. However, the Federal Government has not accomplished that which is already provided for in U.S. statute—protection from dumped and subsidized steel products.

In fact, many of our trading partners are blatantly ignoring international trade laws while others employ tactics a little harder to detect. The effects of these actions, however, are quite simple, yet devastating.

Mr. Chairman, imports in October increased 7 percent over September and exceed October of the previous year by 64 percent. By the end of October, nearly 16½ million tons of steel had been imported into the United States, an increase of 28 percent over 1980. At the end of September, 20½ percent of the steel used in the United States was foreign made compared to 14½ percent at a comparable period in the previous year.

The impact is clear: close to 60,000 steelworkers laid off and another 20,000 working less than a full week.

Mr. Chairman, I submit that immediate action must be taken by the Congress and the administration to turn this situation around. Our domestic industry cannot compete against foreign plants that are unfairly subsidized by their governments. Nor can it compete against steel products that are dumped into our markets at prices below the cost of production abroad. Some 380,000 jobs in the steel industry work force are at stake. We owe it to those workers to enforce existing U.S. trade laws.

The Commerce Department's decision to begin with investigations of alleged unfairly priced imports sent a strong signal to our allies. I hope the results of the administration's yet to be reported meetings in Brussels will show that we insist that the Europeans take our laws seriously and allow our industry the benefit of free market competition.

I also urge that appropriate divisions of the Department of Commerce and International Trade Commission be maintained at sufficient strength to handle the investigations and resulting complaints prepared and filed by the Secretary of Commerce.

These specific steps will help protect the $6 billion in capital improvements already announced by the U.S. steel industry. However, the Congress must improve the trigger price mechanism and incorporate it into statutory law for use on any basic commodity consistent with the principles of free trade. In addition, appropriate provisions must be added to existing law to allow for quantitative restrictions correlated to the state of the American economy. These restrictions would fix the parameters of the U.S. domestic policy indicating the level of unemployment related to imported goods which would be tolerated by the United States under any economic scenario.

In conclusion, Mr. Chairman, I am firmly convinced that our trade policy is broken and needs some fixing. I believe that the Congress must determine the goals of our trade policy and then proceed to enact such legislation as is necessary to have a reciprocal trade policy which is fair to all economic elements and areas of the Nation based on a realistic appraisal of future needs. I ask that you start with a method to measure dumping and import of subsidized commodities and fix the outside limits of tolerable unemployment levels attribute to imports by establishing quantitative limits on imports under any scenario.

Thank you for allowing me to participate this morning. I look forward to working with you and share the perspective of that forgotten American: the former taxpayer who is so because of unemployment caused by imported products enabled by our failure to deal with trading partners on a business-only basis. I, for one, am willing to run this part of Government as a business and not a social program.

Thank you very much.

Chairman GIBBONS. I thank both of you gentlemen for your fair and stimulating statements. They are very interesting.

Mr. Benjamin, I agree with you wholeheartedly when you make the statement, as you do on page 6, that our domestic industry cannot compete against foreign plants that are unfairly subsidized.

I would even take out the word "unfairly", by their government. Nor can it compete against steel products that are dumped into our market at prices below the cost of production abroad.

That is true and, frankly, no one expects you to compete against that kind of competition. It is unlawful, and you should be protected. I would hope that you could institute a part of that protection yourself.

I had many talks with the steel industry over the last 10, 15 years. I have constantly encouraged them to take advantage of the laws that we have that offer them that kind of protection. At times they have thought that they were. I thought that they were. And other times I see them waiting on Government.

But I want to make sure that the competition comes within those parameters that you talk about. No subsidized product should be allowed in this country without a countervailing duty levied against it and no product should be allowed in this country where it violates our anti-dumping laws.

I think we should maintain, as you have asked us to, the strength in the U.S. agencies that enforce those laws—the International Trade Commission and the Department of Commerce—so that they can act expeditiously in this matter.

You know, you have a large group in the steel caucus, you have a large labor union, and you have an Iron and Steel Institute.

Why can't you all get some cases going on these matters?

Mr. BENJAMIN. If I may respond, Mr. Chairman, as you may recall, the Secretary of Commerce initiated cases. The industry was prepared to file cases, and so announced the cases would be filed on December 1. Then they were persuaded by the President of the United States that they should not be filed until such time as further negotiations might be had with our European allies.

At this point the filing that had been promised is on hold. I would anticipate that the steel industry would go forward with the filings, although again, it is a rifle shot when we really need a shotgun effect.

What I mean by that is that it should be the duty of the country to enforce its laws. When the Congress adopts laws and the bills are signed by the President of the United States, then that is action next to the Constitution of this land, the highest law of our land.

That means that we have a responsibility not only to pass, but to enforce. Otherwise, the country would be totally frustrated by the fact that Congress would pass every conceivable law, but never enforce a single one of them.

Whether it is in the laws that affect people in their conduct in the communities, or it is a law that affects the conduct between States and the commerce within the United States or commerce on a world basis, we should enforce the law.

So it really is not the responsibility of the industry other than to call attention of the Government to the problem so much as it is a problem of the Government that should be enforced by the Government. Otherwise, we would conceivably have every single industry in the United States handling its own mission and cases with foreign governments.

We would prefer to have it on a government-to-government basis rather than an industry speaking on behalf of the people of the United States.

Chairman GIBBONS. Well, I can respect your views on that. But, obviously, you have not ever, through any Democratic administration or Republican administration, gotten that kind of cooperation from your government.

The unique part about our law is that they give you a right to come in. Anybody can come in. The unions could come in. The Steel Caucus could come in. The steel industry, through its association, or the steel companies individually, could come in and enforce their rights under these laws.

So you have got a double safety net there as far as your ability to get what you are entitled to under the law. In the first instance you are entitled to the protection of the law. And you should have that protection. It is a fundamental.

I also agree with Mr. Gaydos that I don't like the rebates that come from the value added tax. We made a very bum deal in the beginning in GATT on that.

I have urged our Government to try to negotiate in that area. I would be willing to look at other ideas in that area. Of course, one of the remedies was suggested by a former chairman of the Ways and Means Committee, and his voters didn't see fit to return him. I don't know whether that was the only issue in the campaign.

He suggested we emulate the value-added taxation system. We have got to find some ways around these problems. We can't just keep standing around and wringing our hands.

I feel particularly sorry for you gentlemen, and there are four of you here in this room, at least, that represent steel areas of the United States.

I don't think the steel industry is playing fair by you, frankly. You know, United States Steel's got a right to do whatever it wants to. The money it has accumulated is their money. I am not going to criticize them. But I would have hoped that they would have done a little better by you all by building some new plants, or in some way trying to improve their position, rather than chasing Marathon Oil with Mobil.

You know, I try to look on everything as if it had a silver lining. And maybe that does. But it is a little difficult to see from this vantage point.

Mr. GAYDOS. Mr. Chairman?

Mr. BENJAMIN. Mr. Chairman, I would like to respond to that and I know my friend wants to respond. But I want to say this with your permission.

I have lived all my 46 years in a steel area. I have seen the boom and bust cycles. We have some major steel companies there from Bethlehem to United States Steel to Inland and J. & L. You may have your complaints with United States Steel but you must admit these companies are basically not only the largest in the world but some of the better run in the world.

The interesting thing is that there is no answer to the cycle in steel. In foreign governments they subsidize the industry to keep it alive so that the workers have jobs.

We don't believe in that in the United States, so consequently the only way you are going to get around that in the United States is basically to diversify. Whether that is a good movement for United States Steel in the pursuit of Marathon is something for really their stockholders to decide.

But I do know from one person that is out there and has lived with the steelworkers all these years, that they need to have something that will balance out the year for them so that we don't have massive layoffs, so that the bottom line doesn't have to be looked at each month to determine whether that worker is going to be working 40 hours or 48 hours or 54 hours or not at all that week.

So I don't see it as a negative sign. I see it as a positive sign if used properly.

And, of course, the proper use of that would be to balance off the steel cycle, and not have to look at the bottom line monthly, but be able to look ahead and modernize—modernize with the belief and the support of their entire entity that there is going to be regular monthly income so that stockholders will be paid quarterly and that sort of thing.

And I am just looking at an entire business cycle rather than looking at the point they attempt to pick off an oil company in the throes of a dispute with another oil company.

I can understand how at this time in our history people would complain about that. But I am just saying when you look at the other side of the coin, that is, the boom and bust cycle that steel produces, and the only other answer seems to be to subsidize, and I prefer to go this way.

Mr. GAYDOS. Mr. Chairman, I would like to direct the chair's attention to steel and how it has been treated by the Government over the last 20 years. I am talking about the Kennedy administration, I am talking about Nixon and Johnson, and, yes, even the present administration, the most recent one.

Every time there was a price increase and they had an inflation problem they went to basic steel. And all of our major producers laid their books open to the Government. They said, look, you are not allowing us to make a reasonable profit in comparison to every other corporation in the country. And that has been true for 20 years.

Mr. Chairman, and I say this most humbly to you, I don't know how they stayed in business all those years. I really don't know. But they did.

Now we come along with a merger, a new way of doing business. Why, our competitors, and particularly Japan, have been working through trading companies ever since the war. What is a trading company? A trading company does exactly, and maybe on a larger scale, what we have done in this country over the last 10 or 15 years in taking over companies, making a diversified corporate structure.

We are just copying from the Japanese. In the meantime, the so-called free trade situation never has existed. In name, yes. But in practice, no.

But I would have to plead that case for the steel industry, that they never were given a chance to show their investors and their stockholders that they could make a reasonable profit. In fact, the statistics are very clear. You go back over the last 20 years you will find United States Steel down at the bottom of the earning cycle. The average corporation profit was up around 16, 18 percent.

United States Steel for around 10 years was down to 5 percent, 6 percent. Then they would say, look, you are the one that causes inflation because you are so basic and everything we use in this country is made of steel, you are the main cause of inflation. And the Government put a cap on them.

Mr. Chairman, I would like to introduce into the record as an exhibit accompanying my remarks, an exhibit marked A, regarding this very subject.

It is a letter from Mr. Roderick, president, chairman of the board of directors of United States Steel, to all the shareholders.

If I may just direct the chair's attention to one small segment:

> We have no intention of deemphasizing our steel sector and are continuing to pursue various avenues to restore its vitality. Our plans to file anti-dumping and countervailing duty suits to curb illegal foreign imports remain unchanged.
>
> Our position remains firm in this regard. We continue to need the help of the Government to end trade abuses.

Mr. Chairman, I would also beg your indulgence and ask that I also be allowed to introduce in the record exhibit B. It is an accurate list of all the investment plans of steel companies in the United States totaling almost $6 billion, indicating the name of the company, the project, such as Seamless, New Seamless Tube Mill, Continuous Caster; location and cost in millions of dollars, and target date of completion.

This, I submit, shows the effort of the steel industry and some of the recent gains they have made legislatively with respect to air emission standards and some tax breaks, which you and your colleagues were so instrumental in passing.

Without objection, I would like to offer that, Mr. Chairman.

Chairman GIBBONS. We will be glad to have them. Without objection, they will be made a part of the record at this point.

[The exhibits follow:]

EXHIBIT A

UNITED STATES STEEL CORP.,
Pittsburgh, Pa., November 25, 1981.

DEAR FELLOW EMPLOYEE: You are aware of United States Steel's tender offer to acquire Marathon Oil stock.

United States Steel has been positioning itself for some time to take advantage of such an opportunity. Our decision to make an offer for Marathon Oil stock is an important business decision with far-reaching implications. This move, coupled with our management decisions made in recent months, will further establish United States Steel as a healthy and vigorous industrial corporation.

As an employee, you have an interest, I know, in what this means to you. I would like to share some thoughts with you on this subject.

The decision to acquire Marathon is in line with our basic strategy to strengthen our asset base, as well as to take advantage of prospects for our future growth and profitability. We have often stated publicly our intention to manage our assets in a manner that permits a very competitive return on investment. We have begun to do just that, for example, with the sale of the cement division, selected coal properties and timberlands. The funds resulting from such sales are on hand to apply toward the Marathon purchase.

Marathon Oil Company is an attractive investment for United States Steel. It is a well-managed company that will be self sustaining within our corporate framework. Its acquisition will present us with a profitable business possessing great potential for future growth, thus affecting positively all our activities. The demand for energy is strong and should increase in the years ahead.

The Marathon acquisition is being undertaken without threat to our steel or other business segments. Let me stress that steel is our largest business, and we have every intention of maintaining that leadership position in the future. Steel will continue to be a major sector of our business, supplying a major portion of our corporate revenues, as long as it holds prospects for a competitive return. We are not diverting capital earned in the steel sector to nonsteel business.

In fact, for the steel segment of our business as disclosed in our Annual Reports, we spent $2.670 billion for steel facilities in the five-year period, 1976–1980, although the operating income (before income tax) for the steel segment in the same period was only $66.4 million. As an example of our continuing commitment to the steelmaking segment of our business, we are authorizing in 1981 capital projects of approximately $1.5 billion—the largest annual capital appropriation for steel in our history. Included among the projects under way are the new pipe mill at Fairfield Works, a rail mill at South Works, four continuous casters at various plants and new coke batteries.

We have no intention of deemphasizing our steel sector and are continuing to pursue various avenues to restore its vitality. Our plans to file anti-dumping and countervailing duty suits to curb illegal foreign imports remain unchanged, and our position remains firm in this regard. We continue to need the help of the government to end trade abuses.

Any benefits accruing from the environmental stretchout legislation and from recent tax law changes, as they relate to our steel operations, will be reinvested in that sector. The same procedure will be followed in allocating such benefits to our other lines of business. These benefits will not be applied to the Marathon acquisition.

Historically, United States Steel has been and remains a multifaceted corporation with diverse business interests. Our corporate diversification has been planned on an orderly and prudent basis. While getting the most from our raw materials and production, we have tried where possible to cushion the Corporation against the negative cyclical effects of the steel industry. We have continued to use our position as in integrated steelmaker to broaden our base through maximum utilization of related industrial activities.

Diversification has enabled United States Steel to ride out poor markets in one sector as a result of the vitality of other sectors. This has been especially true of our steel group during periods of depressed steel demand.

The major criterion for strategic management is inherent in all business—profitability. No company can remain in business to the benefit of its stockholders or without detriment to its workforce unless it is profitable.

We must face the economic facts of life. A strong, vigorous corporation spreads its vitality to all its components. A weak one cannot! Without threat to our preeminent position in the domestic steel industry, we intend to pursue a corporate course of action that will promote our growth, broaden our base and insure our financial health.

For all or my tenure as Chairman I have been assuring others—while reminding myself—that the long-term interest of the Corporation must be paramount. Many companies have sacrificed the opportunity to build for the future in order to realize a short-term gain. We have seized an opportunity to build for the future.

I believe that close examination of our decision to acquire Marathon will reveal its merits. We are adding strength, and the Corporation as a whole will surely benefit.

If our tender offer is successful, we will all participate in what will be a more prosperous future for United States Steel.

Sincerely,

D. M. Roderick.

Exhibit B

STEEL INDUSTRY CAPITAL INVESTMENT PROJECTS ANNOUNCED SINCE ELECTION DAY, 1980

[Dollars in millions]

Date	Company	Project	Location	Cost	Target date
1980:					
November	Armco [1]	Seamless tube mill	Ashland, Ky	$290	2d half 1984.
Do	United States Steel.	Continuous caster	Lorain, Ohio	$100	Uncertain.
Do	Bethlehem Steel	Upgrading galvanizing line.	Lackawanna, N.Y	$1	Fall 1981.
November 4	Armco	4 heat recyclers	Houston, Tex	$6.2	Early 1981.
November 9	Armco	Expansion and modernization.	Butler, Pa., Zanesville, Ohio.	$14.9	2 "years."
November 10	United States Steel.	Upgrading continuous caster.	Gary, Ind	$100	January 1982.
November 12	Bethlehem Steel	6 new soaking pit furnaces.	Bethlehem, Pa	$9	Uncertain.
November 20	Bethlehem Steel	Billet inspection machine and grinders.	Johnstown, Pa	$20	Late 1982.
November 24	CF&I Steel	Continuous caster, seamless tube mill.	Pueblo, Colo	$140	Mid-1983.
November 26	Republic Steel	Modernization of Trumbull Cliffs blast furnace.	Warren, Ohio	$70	Uncertain.
December 4	United States Steel.	Continuous caster (Edgar Thomson Works). [2]	Pittsburgh, Pa	$100	Uncertain.
December 18	Latrobe Steel	Expansion and modernization.	Latrobe, Pa., Wauseon, Ohio.	$10	1981.
December 30	United States Steel.	Expansion of seamless tube mill.	Gary, Ind	$30	4th quarter 1982.
1981:					
January 20	Allegheny-Ludlum Steel.	Expansion and modernization.	New Castle, Ind	$3.5	Late 1981.
January 22	Nucor	Joist and grinding ball plant.	Charlotte, N.C	$10	Uncertain.

Footnotes at end of table.

STEEL INDUSTRY CAPITAL INVESTMENT PROJECTS ANNOUNCED SINCE ELECTION DAY, 1980—Continued

[Dollars in millions]

Date	Company	Project	Location	Cost	Target date
1981—Continued					
February 5	Florida Steel	Expansion and modernization.	Jacksonville, Fla	$3	1981.
February 22	Bethlehem Steel	Modification of patenting furnaces.	Williamsport, Pa	$1.2	3d quarter 1981.
February 23	Armco	Continuous caster	Ashland, Ky	$90	1983.
February 24	Allegheny-Ludlum Steel.	Expansion and modernization.	Brackenridge, Pa	$2.7	1981.
March 3	United States Steel.	Refit 3 ore boats with top self-unloading equipment.	(Great Lakes Division).	$40	Uncertain.
March 5	Northwestern Steel and Wire.	2 continuous casters	Sterling, Ill	$25 to 30	Mid-1982.
March 16	Universal-Cyclops Specialty Steel.	Expansion of powder metallurgy facilities.	Bridgeville, Pa	Not specified	December 1981.
March 23	Joslyn Stainless Steels.	Electroslag remelt furnace.	Fort Wayne, Ind	$1.5	2d quarter 1982.
April 1	United States Steel.	Rail mill (Chicago South Works).	Chicago, Ill	$150	"2 years."
April 1	Bekaert Steel Wire.	Wire drawing line	Van Buren, Ark	$4.5	Mid-1982.
April 2	United States Steel.	Air pollution controls to take advantage of "bubble" concept..	Fairless Hills, Pa	$40	Uncertain.
April 22	United States Steel.	Seamless tubing mill	Fairfield, Ala	$500 to 650	1984–86.
April 22	Davis-Walker	Wire rod production plant.	Stockton, Calif	$180	Late 1983.
April 24	Wheeling-Pittsburgh Steel.	2 continuous casters, expansion of seamless tube mills..	Steubenville, Ohio, Monessen, Pa.	$500	Uncertain.
April 30	Nucorp Energy	Welded pipe plant	Fort Smith, Ark	$43	Late 1982.
April 30	Timken	Alloy steel bar and billet plant.	(3)	$500	Uncertain.
May 11	Sandvik	Wire drawing plant	Scranton, Pa	$8	April 1982.
May 13	Republic Steel	Continuous slab caster	Cleveland, Ohio	$100	4th quarter.
May 15	Nucor Corporation	Minimill	(3)	Not specified	Uncertain.
May 18	Republic Steel	Shipments staging area	Cleveland, Ohio	$1	Late 1981.
June 2	Marathon Steel	Expansion of rolling mill	Phoenix, Ariz	Not specified	Uncertain.
June 5	United States Steel.	Various	Various	$125	1981.
June 15	Allegheny-Ludlum	Cost reductions, possible expansion of capacity.	Various locations	$100	5 years.
June 15	Babcock and Wilcox Tubular Products Group.	Modernization and expansion; electric furnace, continuous caster, etc..	Koppel, Pa	$80	3d quarter 1982.
June 22	Armco	Annealing furnace	Baltimore, Md	$1.8	3d quarter 1982.
June 25	Inland Steel	Continuous annealing line.	Chicago, Ill	$100	1983.
June 30	J&L Steel	Blast furnace rebuild	E. Chicago, Ind	$55	(3)
July 8	Carpenter Technology Corp.	Hot rolling mill (at Reading), Miscellaneous modernization.	Reading, Pa., Bridgeport, Conn.	$165	1983–84.
July 17	Armco	Large bar centerless turner.	Baltimore, Md	$1.1	"1 Year."
July 22	J&L Steel	2-strand slab caster. Rebuild 2 coke oven batteries.	E. Chicago, Ind., Youngstown, Ohio.	$315	22–42 months.

Footnotes at end of table.

STEEL INDUSTRY CAPITAL INVESTMENT PROJECTS ANNOUNCED SINCE ELECTION DAY, 1980—Continued

[Dollars in millions]

Date	Company	Project	Location	Cost	Target date
1981—Continued					
July 22	Northwestern Steel & Wire.	Modernization—12 inch bar mill.	Sterling, Ill	$12	Mid-1982.
July 28	Bethlehem Steel	Expansion of galvanizing facility.	Lackawanna, N.Y	$10	End of 1981.
July 29	Armco [1]	Expansion and modernization of seamless tubular plant..	Ambridge, Pa	$56.5	Early 1983.
July 30	Bethlehem	Continuous bloom caster..	Steelton, Pa	$750	5 years.
		Continuous slab caster	Burns Harbor, Ind.		
		Continuous slab caster	Sparrows Point, Md.		
		Modernization, plate mill; modernization, hot strip mills; and modernization, structural mills.	Bethlehem, Pa		
July 30	Copperweld	Electric-resistance weld mill.	Shelby, Ohio	$48	Mid-1983.
		6 machine grinders	Warren, Ohio	Tube finishing facility.	Unknown.
August 15	Quanex	Specialty steel plant	Houston, Tex	$85	Late 1983.
		Heat-treating, finishing facility.	Cheyenne, Wyo	$10	Fall 1982.
August 19	Tubular Corp.	Oil country tubular product upsetting, heat treating and threading facility.	Muskogee, Okla	$38	Late 1982.
August 19	Armco	Expansion of grinding ball capacity.	Kansas City, Mo	$8.2	Late 1982.
August 26	Armco	Finishing facilities, tubular.	Gulfport, Miss	$343	2d half 1984.
September 17	National Steel	Expansion of oil field tubular goods plant.	Liberty, Tex	Uncertain	1st quarter 1982.
September 25	Lone Star Steel	Expansion and modernization.	Daingerfield, Tex	$150	([3])
October 26	Keystone Consolidated.	Improvements at rod-making facility.	Bartonville, Ill	$30	([3])
November 12	Wheeling-Pittsburgh Steel.	Modernization: continuous slab caster, waste and water treatment, air emission improvements, operations improvements.	Mingo Junction, Ohio, Steubenville, Ohio, Monessen, Pa.	$187	Mid-1983.

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[1] Cost revised Aug. 26, 1981.

[2] Tentative.

[3] [Footnote not supplied.]

Note: This list is not necessarily complete. It includes only those trade press reports noted by the American Iron and Steel Institute Press Relations Department. All costs represent estimated figures.

Chairman GIBBONS. Mr. Bailey.

Mr. BAILEY. Thank you very much, Mr. Chairman.

I suppose I probably ought to be, at least on this issue, sitting out there. I would like to make a couple remarks directed at Mr. Gaydos and Mr. Benjamin.

What is occurring worldwide, I think the steel industry is perhaps the best example of it. In the western nations, the so-called free nations, simply a new definition because of the degree of trade, increasingly interdependence, we are simply redefining roles, relationships between governments and companies.

Certainly on the Trade Subcommittee we received a great deal of testimony. I know Chairman Gibbons has expressed a great interest in it—so-called nontariff barriers.

The issue of subsidization is an interesting one. Let's look at the multilateral trade negotiations and what it really gave a company to deal with.

One of the greatest problems you have is defining terms. Coming to an agreement with exactly what subsidization means, for example

Second, you have got a very severe problem with power, the ability of an American company that files a case to get the information it needs to go to court and enforce that information, on the so-called discovery techniques, what is available, from a competitor to prove a point.

That many times makes filing of a suit from a practical point of view something that is very, very difficult to entertain, very difficult to process. The steel industry has suffered from the things you have mentioned here—jawboning. They have been jawboned to death. They are vital to the American economy.

We have got to have them. It is ironic, I view, as a voice of the steel industry, I really don't have it. I have very little basic steel in my industry; very, very little.

I did serve on the Armed Services Committee for a term, though. And steel production and steel capacity, and by the way, we are talking about a family of capital-intensive industries that are suffering in this country, all exhibit the same problems. They suffer from an antiquated tax code in this country that does not recognize the role of capital and need for reinvestment. We just do not. We inhibit our people that way.

Second, we allow our domestic market to be used and to be abused.

Third, we just don't understand, some of this is honest disagreement with some of our trading partners, the definition of the word subsidy is different. It is different. We need to come to some common ground to redefine those things but the criticisms leveled at the steel industry or labor unions involved, I think, many times are unfair.

I think we need to change those things in the future with an eye to redefining what our national goals are. The steel industry in Japan has been used as feedstock for secondary manufacturing purposes.

It has been protected in that regard, it has been invested in for that purpose. It has been safeguarded to provide a hedge against dependence on foreign imports in that area. And Koreans could undersell Japanese steel in Japan by 10 percent if they could sell Korean steel in Japan. They can't.

I hope we will recognize these needs in the future, use our tax code and trade policy to redefine national goals, and use our market as a weapon to force some kind of common ground, some kind of common definition among nations so that comparative advantage we read about in our ninth grade civics textbooks comes to have a meaning that it actually should in world affairs.

I compliment the gentlemen on the statements they have made. Thank you.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Mr. Chairman, I wish only to thank my two colleagues from the Steel Caucus for their excellent testimony today. Obviously, the steel industry is an extremely important one from a viewpoint of the economy of the whole country.

As the chairman alluded to, it is very important in some of our specific districts. I think the two gentlemen from the Steel Caucus, Mr. Gaydos and Mr. Benjamin, have served us well today with testimony pointing out some of the basic difficulties that the steel industry faces. I just wanted to express my appreciation.

Chairman GIBBONS. Mr. Gaydos had to leave the room again. He has some phone calls back there. I just wanted to say that I appreciate his suggestion on page 14 of his statement where he said that we can give a special standing to the category of reciprocal trading partner. It would be a cut above most-favored-nation.

That is an interesting concept. It certainly deserves our attention, because it is obvious that we are going to have to get away from the sort of least common denominator, most favored nation. Other nations are doing that, but most of them are doing it in reverse, rather than reciprocal, rather than one cut above most-favored-nation.

I think most of us had misgivings about the way the international trade functions were reorganized a couple years ago in this Government, but most of us thought that it was perhaps too soon to reorganize that system before it ever really got organized.

We are going to watch it very closely to make sure that it does serve the Nation. Frankly, from what we have been able to see so far there are still an awful lot of turf battles going on in the departments about who is going to run what. Perennial struggle between State, Commerce, USTR, Agriculture, Labor, and Treasury still goes on.

We are not functioning yet in the manner in which we hoped the reorganized trade apparatus would function. So we appreciate your input on that.

May I say also, Mr. Gaydos, on your statement about the Eximbank, on page 16, I applaud you saying that. Most people think the Eximbank is just a subsidy for American business. Really, it is jobs.

We had testimony this morning from Westinghouse in which they said they could point to contracts they had lost within the last few days because they couldn't meet the competitive financing arrangements that other companies around the world can get for their packages. It is this kind of thing that helps us.

As we trim the budget, we don't need to cut off our arms and legs while we do it. On the Export-Import Bank we have got to pull together and lower some of the rhetoric that has been directed at that Bank, and make sure that it does receive adequate financing, because failure to get at the financing is going to cost us jobs.

Mr. GAYDOS. Mr. Chairman?

Chairman GIBBONS. Yes, sir.

Mr. GAYDOS. You and I haven't rehearsed this thing but I do want to say this to you publicly in the witness of everybody in this room: There are very few people in Congress, and I say this with complete admiration and respect of my colleagues, but there are very few of us in Congress, unless for some specific reason you are thrust into the very highly complicated international trade situation, who follow trade and the law that governs it, it is a boring subject, for want of a better description or reason.

So I want to compliment you, Mr. Chairman, for your diligence. And you and I even had some personal remarks on the floor during the 1974 act. Was that 1974 or 1972 Trade Act? I think it was 1974, when we had that discussion as to the proper identification of trade barriers.

And I think there were only five or six people on the floor at that time. I think you and I were the only ones that discussed the nut, or kernel, of the problem at that time.

So I want to compliment you. Since that time and up to the present time you have been at the lead, you have been at the vanguard of leading an intelligent appraisal and understanding of this very highly complicated matter.

It seems to me I think the most salient thing said today, and I say this again with due respect to the entire committee, is what the chairman has just said. That is, we have got to have some kind of cooperative effort in order to develop a national policy of some sort. Get the Steel Caucus, get other people who are involved in this out in the hinterlands, and try to divorce this very complicated subject from international politics and tradeoffs which are so detrimental to us, and hopefully get a national policy in effect as other countries have done.

I just want to say in conclusion, that I think we could enlarge upon your suggestion, and, hopefully within the reasonable time frame, put something into effect along those lines. I think this meeting, and everything we have done in the last 20 years, then would have been useful and very important to us, because I think that is where we have to go—to a national trade policy or position of some sort.

Chairman GIBBONS. Well, I thank you for that statement. Let me say, these hearings have been most interesting to me and to all the other members who have been able to attend. This morning we had an economist of international fame here with us, Mr. Bergsten. He pointed out that no matter what we did, our situation is going to get worse over the next 2 years. That our overvalued dollar right now is going to cause us incalculable trade damage.

I think you and I were in Congress together when we gave up the Bretton-Woods-type dollar valuation. I think most of us at that time expected to see our trade balances change remarkably. But there was about a 2-year lag before it ever changed. After that it changed pretty remarkably. Up until about a year ago we were really gaining ground in the international field.

We have inadvertently shot ourselves in the foot again with that overvalued dollar. Some was controllable, some was not controllable. But your industry, having to compete in a world market where the dollar is vastly overvalued, making imports highly attractive, and currency rates fluctuating so rapidly that no one, even with the best of computers, can keep track of what the real price of anything is, makes it very difficult.

We have got to find some ways around that.

Mr. GAYDOS. I remember, Mr. Chairman, that we talked—I think you and I, personally and informally—on the floor about buying American. Maybe it is the American consumers' problem for buying these foreign imports.

But I use the celebrated example of a steelworker. Let's take him. He walks into a department store under pressure of his family to buy a bicycle. The American bicycle probably costs $100 and the foreign import costs $75. He has inflation as a problem, as we all do, and problems of his own.

The theory goes that he should buy the American bicycle because of his dedication to American workers and things like that. But from a practical standpoint, he has a reasonable right to pay that lesser amount because that is competition as we have grown to know it and live with it. But few foreign consumers have the right to buy American goods.

Somehow we are doing something awfully wrong because that doesn't happen with our foreign competitors. I don't know whether it is subsidization, or what, but it seems to occur in our country all the time.

I am not saying it is a fact but it appears that way to me. It is to me so wrong to force a solution onto the American worker, in a position like that, when we should be implementing something like a national trade policy, enforcement of the Antidumping Act or antidumping suits.

I remember, Mr. Chairman, when we had the old Antidumping Act, we had something like 600 suits filed. I think there were around 50 that were ultimately disposed of. That is when I think you and your committee made it your business to put into the 1974 act a real good antidumping provision.

Am I accurate, Mr. Chairman?

Chairman GIBBONS. Yes, sir; it was much more stringent.

Mr. Bailey.

Mr. BAILEY. There is one thing I would like to comment on and also compliment you for. We have had testimony before the subcommittee on this issue of financial charges. It broadened our concept, social welfare problems of France, Germany, et cetera, not just that but we are talking about things that affect long-term investment patterns.

I really hope there can be a meeting of the minds and get together between the Steel Caucus going beyond the issues of countervailing duty cases, antidumping statutes and dealing with the cyclic problems Mr. Benjamin and Mr. Gaydos were referring to. That is very much a part of this.

It has been a policy problem, our policy in this country, labor being an expendable overhead item. That is probably the best economics in textbook terms. But we have got to get into the area of the financial costs of packages, the Government role in negotiating packages, in trade policy, trade companies, et cetera, or we are not going to be able to compete as a nation with the rising form of state capitalism that we are seeing confront us overseas as this preoccupation of the world with Marxist dogma——

Mr. GAYDOS. Will my colleague yield?

Mr. BAILEY. Yes.

Mr. **Gaydos**. One year, when the average corporate gain or profit in the Nation for the year, was hovering in the area of 16 percent, one particular producer, United States Steel, I think, and the other steel producers were in the same area, declared something like 6.4 percent. It was just absolutely indefensible. If I had money, why would I go buy United States Steel stock or Bethlehem stock?

I would go put it in a company where I could make some money. It couldn't even pay a dividend for some years, and I heard their stockholders complaining. If we are going to have the free enterprise system over here, we are going to have to have a more direct, a more solid and I think a more uniform type of a national steel policy.

If it is true that when you increase the price of steel you cause vast inflation through all items and articles in which steel is used, then we had better take a look at it again. If it is that sensitive, and if that statement is accurate, then we owe those steel producers, who all have money invested, at least some reasonable trade policy.

I am talking too much, Mr. Chairman, but I really welcome your strong suggestion to get the Steel Caucus and get our other friends together and hopefully help this committee effectuate some kind of meaningful change.

Mr. **Bailey**. We appreciate it, sir. We appreciate both of you coming and your fine statements.

Mr. **Gaydos**. Thank you.

Mr. **Benjamin**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Our next witness is Mr. Robert B. Peabody, who is the president of the American Iron and Steel Institute. We welcome you. You may proceed as you wish.

STATEMENT OF ROBERT B. PEABODY, PRESIDENT, AMERICAN IRON AND STEEL INSTITUTE; ACCOMPANIED BY FRANK FENTON, VICE PRESIDENT OF INTERNATIONAL TRADE AND ECONOMICS

Mr. **Peabody**. Mr. Chairman, my name is Robert B. Peabody. I have with me today Mr. Frank Fenton, who is AISI vice president of International Trade and Economics. I am president of the American Iron and Steel Institute, whose member companies include 66 domestic steel producers. These producers account for approximately 92 percent of domestic steel production capability and employ approximately 380,000 persons.

On behalf of these companies, I express my appreciation for the opportunity to testify today before your committee. My remarks will address the trade policy of the United States as it affects our domestic steel industry, and the implementation of the policy in the first year of the Reagan administration.

I must first briefly recall the steel trade policy inherited by the present administration from its predecessor. At the end of 1977, a special Government study of the steel industry's problems came to the conclusion, in the Solomon report, that there was a serious trade problem for the American steel industry. The problem then involved, as it still does, unfair trade practices, that is to say, imports of injuriously dumped and subsidized steel—which are clearly defined both in domestic law and in international trade law.

No matter that the domestic industry had been pointing to U.S. trade law violations in steel for many years before 1977: the Carter administration, however belatedly, did in the end recognize the problem of injury to domestic steel producers caused by dumped and subsidized foreign steel entering the U.S. market. Indeed, President Carter himself said at the time that Government had been "derelict" in enforcing the trade laws.

As a result of that recognition, the trigger price mechanism was established. The TPM represented a first, reasonable but in fact incomplete approach to solving the problem of unfairly traded steel imports. First, it was no more than a set of administrative procedures whose purpose was to alert Government officials to the possibility that dumping of steel in the U.S. market might be taking place. Thus TPM was in no way a substitute for the enforcement of U.S. trade law but merely a mechanism to facilitate enforcement.

Second, it was not designed to help detect all dumped steel imports but only those tonnages brought into the market at potentially dumped prices which were also below the value of Japanese steel specified by the TMP. The purpose and effect of this feature of the system was twofold. On the one hand, it insured American steel buyers access to supplies from those believed to be the world's most cost-efficient producers. It thus guaranteed that the system would have no needlessly inflationary or otherwise harmful effect on domestic steel consumers. On the other hand, it also gave a measure of protection to those foreign steel producers, especially European, whose costs were substantially higher than Japanese and who might therefore be largely excluded from the U.S. market if they were forced, by rigorous application of U.S. trade law, to sell at fair value and without the benefit of foreign government subsidies.

While the TPM thus did not give the domestic industry the full benefit of its rights under U.S. law against unfair foreign competition, it was accepted by the industry as a laudable attempt by an American administration to enforce our trade laws. But because of the Japanese cost base features that favored European and other foreign producers, it was also clear that the administration—even though then moving toward more effective trade law enforcement—was consciously blunting that move—to some extent—because of foreign policy considerations.

The TPM, as you know, continued in operation until March of 1980. Along the way, the Trade Agreements Act of 1979 was passed. This was a significant event for the steel industry because this committee and Congress wrote into American law revised provisions on unfair trade practices—injurious dumping and subsidization—that are and always have been our basic concern in trade policy. The fact that the Congress gave such emphasis to the problems caused by these practices was an encouraging sign that U.S. trade policy thinking was continuing to evolve in the right direction.

But while overall trade policy seemed to be moving in the right direction, the operation of TPM as a sector-specific feature of a policy of trade law enforcement was breaking down. In March

1980, frustrated by ineffective administration of TPM, U.S. Steel decided to file cases, that is to invoke the direct application of trade law. And later in the year—in August—the General Accounting Office issued a report specifically detailing many of the flaws and operating failures in the system.

The next event was of great significance in the history of the steel industry's attempts to obtain its rights under U.S. trade law. The European Community at the Venice Economic Summit had requested the U.S. Government to take such action as would lead to a withdrawal of the pending cases. The result materialized at the end of September. The cases were withdrawn, and the TPM was reinstated in a strengthened form, along with an undertaking by the Carter administration that henceforth it would be efficiently operated and stringently applied.

By the end of March 1981, 6 months after reinstatement, there was continued hope that the system might now be working. Market penetration by imports in the first quarter of 1981 was 13.9 percent. Commerce Department under the new Reagan administration leadership was clearly trying its best to make sure that the system worked properly. But in the succeeding 6 months—in fact right until the present time—the trade problem that has so long and so badly injured the domestic steel industry burgeoned again in the most seriously aggravated form. This brings me to the present critical juncture in steel trade.

Market penetration by imported steel rose from the 13.9-percent level in the first quarter to 18.2 percent in the second. In July the figure rose to 20 percent; in August to 25 percent; in September it was still over 20 percent. October imports—at 1.9 million tons—represented a market penetration rate of 22 percent. These sharp increases in imports were taking place as domestic production was falling. The industry's operating rate, which was 88 percent in March, dropped to 59.3 percent by the end of last month. And, as you are well aware, there is little in the economic data to indicate any significant upturn for steel in the next few months.

Our concern—and I cannot stress this point too strongly—is with steel imports that come in at predatory, dumping prices, or with the benefit of foreign government subsidies, and which injure the U.S. industry in the sense which is defined by the trade laws on our statute books and which is also fully consistent with international trade law.

We are gratified that this concern is shared by the administration and, we trust, the Congress. Under the terms of the reinstated TPM, the Government has self-initiated antidumping or countervailing duty cases against seven countries of origin in respect to four steel product categories. The investigative process yesterday reached the International Trade Commission, which is to adjudicate the question of injury under our trade law procedures. We are confident that the facts on injurious dumping and subsidization will be proven and that the proper remedies will be applied.

But the problem cannot be allowed to rest there. The products involved in the self-initiated cases cover only a limited portion of the steel imports thought to be dumped and/or subsidized. There is strong evidence that the TPM system has been fundamentally evaded by a variety of tactics such as the use of off-shore procurement bases, evasions of the related party transaction rules, and so forth.

Among the principal evaders of the system are producers in the European community. Yet it was the Commission of the European Community, you will recall, that opposed the suspension of TPM in March last year and welcomed its reinstatement in October when United States Steel's cases were withdrawn. But today, following self-initiation of cases under TPM by the U.S. Government, the Europeans are threatening a trade war which they seem to indicate will surely break out if any further cases are filed.

I should mention also that European producers are not our only problem in unfairly traded imports. Many of the newly industrializing countries—such as South Korea, Taiwan, and Brazil—have been building up their steel industries under government ownership and control in a manner which recalls how the Japanese steel industry was built up in the fifties and sixties—with preferential access to capital sources as industries targeted in their governments' national economic planning. Such government policies result inevitably in pressures to export without regard to fair value or subsidies or the injury that may be caused in the recipient countries.

What, then, is the domestic industry's position at this point? Our members' view can be summarized quite simply. Injurious dumping and subsidization of steel imports into the U.S. market must be stopped once and for all. Legal procedures are available for the purpose under U.S. law and are fully sanctioned under international law. They must be enforced.

We don't believe this policy position can be characterized as protectionism. You yourself, Mr. Chairman, have publicly expressed the view that domestic producers have the right to protection against unfair competition. That is all the domestic industry asks.

Several member companies have publicly stated their intention to file antidumping and countervailing duty cases in addition to those already self-initiated by Government. Let me address the consequences of such action—and the consequences of not so acting when an individual company feels it has the necessary evidence of injurious dumping and/or subsidization.

If such cases are filed, the processes offered by law will be followed and, assuming the cases are indeed sustained, the injury complained of will be redressed. Let us suppose that the cases filed and sustained will dispose of a substantial measure, if not all, of the injurious dumping and subsidization of imports now taking place. The industry will then find itself in a position where the previously existing obstacles to its program of revitalization and modernization will all have been substantially reduced or eliminated. We now have a basically sound system of capital cost recovery. Progress is being made toward a more cost-effective and rational implementation of the environmental laws.

The thrust of the administration's policy toward reindustrialization will be of major benefit to the domestic steel industry by raising the level of domestic demand over time. So—with the substantial elimination of loss of internally generated funds due to unfair trade practices—our member companies will be all set to proceed with their revitalization and modernization plans. These involve some $6 billion of new steel plant investments—over and above the routine investments that continue to be made in existing facilities. And, in a climate of macroeconomic policies conducive to continued steel modernization investments, the stage will be set to continue that program and restore to American steel producers their full competitive edge.

What is the alternative? Let's suppose dumping and subsidization of imports continue unchecked and that cash flows—because of increased product costs and reduced revenues—thus continue to be skimmed off by unfairly traded imports. Not only will the current $6 billion modernization program be seriously jeopardized, but also the investment plans that are in the pipeline in various member companies and due for consideration in the coming months and years will be equally jeopardized. How can we expect managements, whose jobs are to improve the efficiency and profitability of their companies, to remain uninfluenced if public policy clearly indicates that U.S. laws on fair trading of imports won't be fully enforced and that the profitability of investments in steel will therefore be chronically reduced? In our view, as we have stated and restated so many times, the long-term result will be a serious erosion of the domestic steel industry in size and strength, to the lasting detriment of our Nation's economy.

Let me repeat, in closing, the core of the domestic steel industry's policy on imports. We seek the full, prompt enforcement of our trade laws: nothing more and nothing less.

Thank you very much, Mr. Chairman.

Chairman GIBBONS. As far as I am concerned, you are entitled to it. I have worried for quite some time, as you have, that we had these laws on the books that protect American industry against unfair trade practices, dumping and subsidization. I realize that it is difficult for any private industry to prove those kinds of cases. They have got to get a lot of evidence, and that evidence is hard to come by.

But I always figured an industry that was as large as the American steel industry and as well organized as it is—and that is no slur at all; I mean it correctly, that it is a well-organized industry—could always bring that kind of case, and if they had a case, I thought they could get the kind of relief that they needed. But I have always been disturbed that every time you get ready to bring a case you back off. I know you get importuned by people in the executive branch, but I have never importuned you to back off of a case, I want you to understand that.

If our laws are not effective, I would like to hear about it. I sometimes worry about us initiating cases where we will be the initiator and the jury and the judge. That worries me. I think a small person that just doesn't have the resources, skills or finances to institute those kinds of cases is a different situation, but I always thought the larger industries in America were perfectly capable of initiating.

Mr. PEABODY. Mr. Chairman, I hope you aren't under any illusions about the costs.

Chairman GIBBONS. No, I am not. It is very expensive.

Mr. **Peabody**. There is a really serious cost problem. It isn't a question of hundreds of thousands of dollars. It is millions.

Chairman **Gibbons**. I recognize that. One of the things that we are trying to find out in this hearing from litigants is what can be done to reduce those costs, because I realize that it is a very expensive thing even for someone as large as you. It would be prohibitive for most small businesses.

We have gotten some good suggestions, and some that we will perhaps try out. I want you to know that as far as I am concerned, this committee is here to make sure that our laws are fully and fairly and completely carried out, and if they are not effective, then we will try to change them to be effective, to meet that type of competition that we can broadly classify as unfair and illegal competition.

I have worried about the TPM, because I was afraid it was always a very weak crutch, and it seems to me that it has really turned out to be the second largest foreign aid program we have ever extended to Europe. I was afraid of that from the very beginning.

I know Europe is trying to reform some of their steel industry.

Mr. **Peabody**. Yes, sir.

Chairman **Gibbons**. But I am not sure that we aren't thwarting some of their initiatives by offering more crutches for them to lean on. I recognize British steel has cut or is in the process of cutting its employment by a third, and apparently the steel companies in Europe proper, the French companies and some of the others, are cutting their employment and retiring obsolete facilities, but we should not allow their problems to overcome us.

They are a healthy society and capable of standing on their own feet in this regard, so I would like to see us get rid of the TPM. Frankly, it looks like an administrative nightmare to me. Maybe there is some way that it can be made to work better, but I have looked over some of their regulations and some of their publications, and I must say while I am not an expert in that area, I don't see how in the world you can put as much faith in them and weight on it as you have to. I don't see how the businessman can do it.

Mr. **Peabody**. Well, you can appreciate having tried to study the regulations, that they are indeed complicated. The thrust of the TPM is really just a fact-finding mechanism designed to produce information, to determine whether or not the dumping law has been violated.

I expect there are other alternate systems that could be employed. That happens to be the one that the prior administration put into effect for that purpose.

The basic underlying problem, I guess, Mr. Chairman, lies in the fact that the steel industries throughout the world, with the exception of here in North America, are in one form or another essentially instrumentalities of government social policy, and trying to devise a system that would affect the enforcement of the Dumping Act, that would affect the enforcement of the countervailing duty statute in that context is really the basic problem that we have. We are competing with national treasuries that are being employed in steel.

That is not only in Europe. If you take into account in Japan, for example, from World War II through 1978, at no point in time was there as much as 1 million tons of foreign steel permitted to enter Japan. That market was thoroughly and completely protected even though the industry had been totally devastated through World War II. The Japanese steel industry was made a target industry, so that it could advance a social purpose. Ships consume steel, automobiles consume steel, what have you.

The question of government control and government deployment of an industry for social purposes, as Mr. Bailey said, is a very complicated definition. What is a subsidy? What is the utilization of the industry in something other than a profitmaking mode? These are the kinds of things that as a matter of administration policy caused Mr. Solomon and his associates to produce this TPM as, hopefully, a mechanism to facilitate some measure of enforcement, and yet at the same time provide some measure of the degree of protection that the administration thought foreign industry should be provided.

We have got to the point now, I think, where those days are coming to an end. We have got to enforce the Dumping Act and the Subsidy Act vigorously and vigorously.

Chairman GIBBONS. I encourage you to do it. I want you to know there will be no holdback on my part. I realize that I am not the President of the United States and I don't have as great a responsibility as he does, but I think we have tarried too long in not exerting our rights under our agreements. Nobody forced these people to sign these agreements. They have all agreed to them and they are there to be honored in their enforcement, and I say go get them.

Mr. Bailey.

Mr. BAILEY. Thank you very much, Mr. Chairman.

Mr. Peabody, when I first began to examine, I was relatively new then and I am relatively new now, the multilateral trade negotiations and the product that was presented to the Congress for an up or down vote. We had no chance to amend it, incidentally, if you will remember. We could only ratify or turn it down. My eye caught the tools available to someone, a private party, let's say, who was empowered to bring a suit under the conditions in the agreement.

Could you comment on this? You know it is a legal term, discovery. All it means is that you have available legal process to go into a party where you have made out a case, or at least have met something almost like a criminal standard of probable cause, where you have made out some type of case and you go and say I need to see XYZ in terms of records and need to compare things.

I don't know if you are qualified to answer this, so please feel free to say so.

Mr. PEABODY. My license tells me that I am supposed to be able to.

Mr. BAILEY. I don't want to be unfair to you. I was going to say if you don't feel sure about this—and I don't know if I am right; it's just what I suspect from what I have read. After I read it, if I compared it with what would happen in a civil case in the United States of America, or what would happen in a civil confrontation in practically any of the jurisdictions who are signatories to the agreement, I would have to say that it compared very poorly as a legal tool. Many of us don't understand that that has been one of the most discouraging parts, one of the most fearful things about bringing a case and incurring the wrath of a host government or a foreign government.

That is a frightful thing. That is a terrible amount of pressure for a company to face. Could you comment on that?

Mr. **Peabody**. Yes, sir. I think on a scale of 1 to 100, if 100 would be the Federal rules under which discovery is conducted in civil litigation, I guess you would characterize this as zero. It doesn't even reach one.

One of the provisions that is buried away in the Trade Act of 1979 that you gentlemen had put in contemplated the accumulation by the Government system of information on subsidies, and information on related matters. To my knowledge, that has not yet realistically begun to click in. In fact, I think the greatest contribution to that library is going to be taking place when the private complaints are filed, if in fact they are filed, or through the work that Commerce is doing in connection with its self-initiated complaints.

The truth of the matter is this is a horribly expensive, horribly difficult burden to put on any private company to seek out how the work is subsidized in France, or how it is subsidized in Italy.

Mr. **Bailey**. And most importantly, what we have not done—and there has been very little discussion of this; in fact, I hadn't heard any discussion of it before we started to get into it in these hearings—we have not provided them with the tools to enable them to do the job, and that is not publicized very often.

Mr. **Peabody**. No. If anything, it isn't even advanced to the point of attempting to provide the tools.

Mr. **Bailey**. I am not going to say that we got schnookered again, but if I was sitting down as an attorney—you know the old adage about the poor country lawyer type—I would think, from what I have been able to see, that I wouldn't worry a doggone bit about talking in an international agreement about subsidies or what they mean, because when it comes down to being able to prove it, I haven't provided the means.

It is sort of like looking at the thing there and saying it looks like an elephant—no pun intended—it is built that way, it has got that color, it has got those characterisics, but for purposes of legal definition I can't prove it, and that is what the situation has been.

Mr. **Peabody**. I think there are going to be proven some utterly incredible subsidies, but it has been a horrendous under taking by a lot of people at a very high cost in money, in time.

Mr. **Bailey**. Mr. Peabody, not to interrupt you, but I think we are on the edge of a whole, brandnew era in world trade relations, and I think if this country doesn't realize some of the basic things involved here, that the export of American capital, jobs, technology is going to continue in the next 10, 15, or 20 years, this country is going to decline and we are going to be in a terrible position.

It is not a deliberate thing. It is an issue of philosophy. It is an issue of developing countries. It is a different approach to things. We have got to get some international rules that take this concept of trade, because our international economy has outgrown the nation-state structure in our ability to deal with these things.

Mr. PEABODY. I guess the only place I disagree with you, Mr. Bailey, is we are not on the edge. We are right in the middle.

Mr. BAILEY. OK, it is a matter of degree. I just don't think we have yet awakened in this country as to what it means when we start talking about the word subsidy and role and function of government and free enterprise, because it doesn't mean the same thing the world over.

Mr. PEABODY. Let me mention this——

Mr. BAILEY. We are doing it the fair way and we are doing it the "keep away from government" way. We are much less involved than these other countries.

Mr. PEABODY. Let me just mention Korea. The Korean carbon steel industry is a creature of the national government. Posco is an entity owned by the National Government. It now produces something over 8 million tons of steel a year. They contemplate a new plant that would go in at either 2 or 4 million tons. It is not privately owned. It is Government owned. When that product, as it has, enters the United States, is that something that is subject to our subsidy laws?

I would suggest to you it is. It is purely and simply an instrumentality of the National Government, designed not to produce profit but funded through Government facilities, Government money, Government loans, to produce a product that isn't obliged to be produced at a profit, but is designed to implement the social policy of the Government of South Korea.

Now, there is almost a classic illustration of something to be contrasted with, say, the British Steel Corporation, the same kind of thing—I shouldn't say contrasted; compared with British Steel Corporation, the same kind of Government instrumentality, totally funded, monumental losses. The distinction is nil between the two. That is the nature of most of the world's steel produced in the third countries.

Mr. BAILEY. I personally want to thank you for your testimony and views. I think the realization is being forced on us, because of what is happening to us internally. I think years ago we were just so big, brawny and strong that we just didn't see it coming.

Times have now changed. Economies have changed. Philosophies have changed. The world is getting smaller. I think we all live on the edge of an exciting new era, and I just hope we have the courage and wherewithal as a country to contribute to the definition of what this new world order is going to be.

I hope it is a free enterprise one because that makes the most sense when it comes to allocating these scarce resources that these 2, 3, 4 billion of us there are—I don't know how many there are—10 billion by the end of this century.

Mr. PEABODY. The chairman will recollect we have been saying this for some 15 years.

Mr. BAILEY. You mean I didn't newly discover this?

Chairman GIBBONS. Mr. Peabody, I hope you all bring those cases yourself because I tell you if the Government makes them for you, they may back out halfway through. So, I would rather see you all bring them.

Mr. **Peabody**. I will say this, Mr. Chairman, in closing. You read carefully the words in the act with regard to the settlement discontinuance, and you will see that the government system has very substantial control over those cases.

Chairman **Gibbons**. I realize that. Thank you very much.

Mr. **Peabody**. Thank you, sir.

Chairman **Gibbons**. Our next witness representing the Specialty Steel Industry of the United States is Dr. Adolph J. Lena.

Dr. Lena, will you come forward, please. You may proceed as you wish.

STATEMENT OF ADOLPH J. LENA, CHAIRMAN OF THE BOARD, AND CHIEF EXECUTIVE OFFICER, AL TECH SPECIALTY STEEL CORP., ACCOMPANIED BY DAVID A. HARTQUIST, COUNSEL, ON BEHALF OF THE SPECIALTY STEEL INDUSTRY OF THE UNITED STATES

Mr. **Lena**. I have with me, Mr. Chairman, Mr. David Hartquist of the firm Collier, Shannon, Rill & Scott here in Washington.

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to testify on behalf of the Specialty Steel Industry of the United States, which is composed of 16 domestic producers of stainless and tool steel products. A list of our members is attached to my testimony as exhibit A. I am also chairman of the board and chief executive officer of AL Tech Specialty Steel Corp. of Dunkirk, N.Y.

I am here today to describe the current difficulties faced by the domestic specialty steel industry as a direct result of foreign government subsidization. In many ways, the specialty steel industry is at the leading edge of the trade problems faced by this country. I think our experience will be instructive for this subcommittee.

At the outset, I want to emphasize that the U.S. specialty steel industry is basically a competitive, technologically advanced industry. We are not a sick industry crying for protection. Quite the contrary. In fact, several weeks ago in testimony before this subcommittee, Under Secretary of Commerce Lionel Olmer described the domestic specialty steel industry as one which should be highly competitive in the world marketplace. A report by the Office of Technology Assessment of the U.S. Congress last year also described domestic specialty steelmakers as efficient and competitive. In a recent article by Dr. Joel S. Hirschhorn, project director of the OTA study, said, "Alloy/specialty steel companies have a history of high growth rates, high return on investment, technological innovation, high labor productivity, adept marketing strategies and an ability to succeed without much government help." I would like to insert in the record, Mr. Chairman, a short paper describing the competitiveness of the domestic specialty steel industry and the reasons for our current difficulties.

Chairman **Gibbons**. It will be admitted.

Mr. **Lena**. Thank you, sir.

Yet, we face dramatic increases in import penetration. We are rapidly losing our markets to imports. Bethlehem Steel, a producer of alloy tool steel for 75 years, decided several months ago to shut down its tool steel business completely. Import penetration of specialty steel products has nearly doubled since the first quarter of 1981. The penetration level will go much higher in the months ahead unless the U.S. Government takes immediate action to enforce our trade laws and the agreements negotiated under the General Agreement for Tariffs and Trade. Let me give you some startling statistics. In the third quarter of 1981, import penetration of alloy tool steel was almost 40 percent, stainless steel par 26.6 percent, stainless steel rod 47 percent, stainless steel sheet and strip 11.2 percent and stainless steel plate 7.5 percent. October figures are worse yet.

Imports are not only flooding our market at a time when domestic demand is down, but they are on their way to taking over the market and driving more of our producers out of the business entirely.

We have evidence that foreign producers are charging prices well below prevailing domestic prices for most specialty steel products. Confidential sources reveal that foreign products are selling for as much as 54 percent below the U.S. price for certain specialty steel products. We know that foreign steelmakers could not do this unless they were assisted by massive government subsidies.

With the exception of stainless steel wire, our products are not covered by the trigger price mechanism. There is a "surge mechanism" in effect which is designed to monitor increases in imports and alert the Commerce Department to possible unfair trade practices. However, despite the good faith efforts of the Department of Commerce, the surge mechanism simply has not worked. It has not decreased the flow of subsidized imports and, in fact, these imports are at a far higher level now than they were when the surge mechanism was implemented early this year.

What are we doing to deal with the problem? Our industry association, known as the Tool and Stainless Steel Industry Committee, jointly filed a petition with the United Steelworkers of America on December 2 under section 301 of the Trade Act of 1974, as amended.

We named seven countries in our petition whom we know are subsidizing their specialty steel industries. The countries are Belgium, France, Italy, and the United Kingdom—all of which are members of the European Community—and Austria, Brazil, and Sweden, which are not EC members. The European Community signed the GATT Subsidies Code on behalf of all its members. The other three countries signed the same code as individual signatories, as did the United States. In short, we are all supposed to be playing by the same rules of international trade. It is clear that we are not.

The filing of our section 301 petition permits the U.S. Government to take constructive action to discourage foreign government subsidization of specialty steel producers. We hope Ambassador Brock will do so, and we hope that this subcommittee will support that effort.

Mr. Chairman, the filing of our section 301 case is only the beginning of a broad-based effort on our part to deal with unfair trade practices. We are also investigating imports from various countries not covered by the section 301 petition and expect to be filing antidumping and countervailing duty cases in the near future.

When Ambassador Brock described the trade policy of the Reagan administration to Congress several months ago, he stated that the U.S. Government would stand behind efficient, competitive industries. he said that the trade laws of the United States would be vigorously enforced. We believe he meant what he said. We believe we are a competitive industry under equal conditions. We respectfully urge this subcommittee to support our efforts to save a vital industry which deserves to grow and prosper.

Thank you.

[Attachments to the prepared statement follow:]

SPECIALTY STEEL: A HIGH-TECHNOLOGY, COMPETITIVE AMERICAN INDUSTRY IN TROUBLE

SUMMARY

The domestic specialty steel industry has been found to be a highly competitive American industry which is essential to the national defense. Yet, because of increasing competition from foreign producers who are subsidized and who use unfair trade practices in the American marketplace, the industry faces a critical challenge to its future. Imported specialty steel is taking a rapidly growing share of the domestic market, worker layoffs are increasing weekly, and the U.S. government's "surge mechanism" has proved ineffective to deal with foreign unfair trade practices. Therefore, the industry has undertaken an aggressive program to deal with the problem of foreign unfair trade practices. The first action to be taken is the filing of a "section 301" case with the Office of the United States Trade Representative. This case describes the vast system of government subsidies to foreign specialty steel producers. These subsidies violate international and U.S. laws, and the specialty steel industry has asked our government to take appropriate actions to eliminate unfair trade practices and require foreign producers to compete fairly in the U.S. marketplace.

I. INTRODUCTION

The United States' specialty steel industry is recognized as a highly competitive American industry essential to the national economy and defense. Yet, because of increasing competition from government-owned or subsidized foreign producers in the American marketplace, the industry faces a critical challenge. Imported specialty steel, using unfair trade practices, is taking a rapidly growing share of the domestic market. This is causing severe injury to American producers, increasing worker layoffs, and threatening the future of this industry.

The U.S. government's specialty steel "surge mechanism" has proved ineffective in dealing with foreign illegal and unfair trade practices. The Specialty Steel Industry of the United States and the United Steelworkers of America, AFL-CIO/CLC are therefore mounting an aggressive program under U.S. trade laws. The first step is the filing—on December 2, 1981—of a "section 301 case" with the Office of the United States Trade Representative (USTR). This landmark action highlights the vast system of government subsides to foreign specialty steel producers, which violate U.S. and international laws. The specialty steel industry and the union have asked our government to take appropriate actions to require foreign producers to compete fairly in the U.S. marketplace. Additional actions against certain countries and foreign specialty steel producers covering specific product lines will be taken. The industry contemplates that supplementary "antidumping" and "countervailing" duty suits will be filed as soon as current investigations have been completed.

II. THE SPECIALTY STEEL INDUSTRY

America's highly industrialized economy has become critically dependent upon specialty steels.

"Specialty steels" generally are identified as stainless steels; tool and die steels; high-temperature alloys (superalloys); electrical, magnetic, refractory, electronic, and reactive metals. They are designed and produced for applications in extreme environments demanding special hardness; toughness; resistance to heat, corrosion, or abrasion; or combinations of these characteristics. Because of their high-alloy contents, technological properties, and/or the special processing techniques needed to meet close specifications, specialty steels are more difficult to make and call for greater labor input than other steels.

The national requirements for specialty steels may be classified into two groups: activities which are necessary to maintain the civilian economy and a strong industrial base; and those defense needs which bear directly upon military preparedness. Many uses of specialty steels in these two areas are interrelated, and often manufactured products containing specialty steels can be used for both civilian and military purposes. Specialty steels are vital to the needs of our civilian economy and our defense operations—which, in turn, are dependent upon the ability of this nation to maintain a strong, viable industrial base.

There are many critical applications for specialty steels for which there is no economic, or readily available, substitute material. To keep the highly mechanized and broadly diversified economy of this country running smoothly, specialty steels are an indispensable, basic material.

III. A HIGHLY COMPETITIVE AMERICAN INDUSTRY

The United States' specialty steel industry is the world's most efficient producer of specialty steels. U.S. specialty steel companies have invested heavily in new facilities and advanced technology—resulting in greatly increased productivity. America's specialty steel producers are the world's leaders in technology, advanced equipment, and alloy developments.

The Office of Technology Assessment of the United States Congress completed an extensive study of the steel industry in 1980. The OTA concluded that, with major investments having been made in advanced technologies such as continuous casting and the "AOD" refining process, the domestic specialty steel industry is highly competitive.

IV. AN INDUSTRY ESSENTIAL TO NATIONAL DEFENSE

The Senate Armed Services Committee has determined that the specialty steel industry is essential to the national defense. Following hearings which included witnesses from the Department of Defense, the Committee determined that the products produced by the specialty steel industry are absolutely necessary to support our military capabilities.

Some examples of industries producing essential goods and services for the national defense which are dependent upon specialty steels are the following: the electrical power system, the aircraft industry, semiconductors, food processing, transportation systems, marine equipment, petroleum processing, and chemical processing. Tool and high-speed steels are "the tools which make everything else" in our industrialized economy.

V. THE IMPORT PROBLEM

Subsidized and dumped imports of foreign specialty steel present a critical challenge to the future of the domestic industry.

Specialty steel imports are not covered by the Trigger Price Mechanism (TPM), with the exception of stainless wire. However, in 1980, the Carter Administration announced a "surge mechanism" for specialty steels because of concern about such imports. Administered by the Department of Commerce, this program is designed to alert the government of "surges" in specialty steel imports. These surges may indicate unfair trade practices resulting from foreign dumping or government subsidies. If the Commerce Department finds evidence of dumping or subsidization, appropriate legal actions can be taken against foreign producers.

Despite the good-faith efforts of the Department of Commerce, the surge mechanism has not proved effective to deal with the import problem. Imported specialty steel is taking a growing share of the domestic market. For example, current data (3rd quarter 1981) indicates that imports—as a percentage of domestic consumption—are at the following extremely high levels for the key specialty steel product areas shown below:

Import penetration

Product:	*Percent*
Alloy tool and high-speed steels	39.5
Stainless steel:	
Rod	47.0
Bar	26.6
Plate	7.5
Sheet and strip	11.2
Pipe and tubing	58.9

Unemployment is increasing weekly. The present rate of unemployment in the domestic specialty steel industry is over 21 percent. In addition, Bethlehem Steel, a substantial producer of tool steels, has announced their complete withdrawal from that market and has described imports as a major factor in their decision.

The Specialty Steel Industry of the United States and the United Steelworkers of America will not sit by while our industry is devastated by illegal and unfairly traded imports of specialty steel. Therefore, the industry and the union have undertaken an aggressive program to deal with this problem. The first action is a "section 301" case, filed December 2 with the Office of the United States Trade Representative (USTR). Additional actions are under consideration.

The "section 301" case describes the vast subsidies being provided to foreign specialty steel producers by their governments. These subsidies are illegal under international agreements, such as the Subsidies Code of the General Agreement on Tariffs and Trade, and under the American countervailing duty laws. It is obvious that, no matter how efficient, American companies—which must be profitable to survive—cannot long compete against subsidized foreign producers. Prices of foreign specialty steel products sold in the marketplace often do not even cover the costs of producing them. Foreign producers can afford to sell at such prices only because their losses are made up by government grants, loans, tax rebates, and other similar subsidies.

The industry and the union are hopeful that our government will take appropriate actions to require foreign producers to compete in the domestic market under fair, competitive conditions.

VI. SPECIALTY STEEL PRODUCERS OF THE UNITED STATES

Employing approximately 26,000 production workers, the producing facilities of the specialty steel industry are small in relation to large carbon steel, fully integrated plants. Annual sales by all specialty steel companies are a fraction of those by the large, carbon steel producers. Some specialty steel producers are one- or two-products companies. The equipment required is highly specialized and must be versatile enough to take care of small production lots of a wide range of grades, custom melted for the specific requirements of each customer.

Though relatively small, the specialty steel companies are well known. They include the following:

- Allegheny Ludlum Steel Corp.
- AL Tech Specialty Steel Corp.
- Braeburn Alloy Steel Division/Continental Copper & Steel Industries.
- Carpenter Technology Corp.
- Columbia Tool Steel Co.
- Crucible Materials Group, Colt Industries.
- Eastern Stainless Steel Co.
- Guterl Special Steel Corp.
- Jessop Steel Co.
- Joslyn Stainless Steels.
- Latrobe Steel Co.
- Universal-Cyclops Specialty Steel Division/Cyclops Corp.
- Washington Steel Corp.

Large, carbon steel companies which have specialty steel operations include those shown below:

- ARMCO, Inc.
- Jones & Laughlin Steel Corp.
- Republic Steel Corp.

Chairman **Gibbons**. Thank you.

Mr. Bailey.

Mr. **Bailey**. Thank you, Mr. Chairman. I very much appreciate the chairman's kindness. Mr. Lena, I have to go on the floor and work on a bill which is absolutely vital to me.

I want to compliment you on your statement and I want to adjust one more dimension. I had occasion to talk with Ambassador Brock recently very briefly. In fact, the chairman was present at the time, asking whether or not there was dumping going on. His simple answer, very quick answer before he elucidated was "No question about it." Proving things are another matter, as we all know. I want to wish you luck.

I must say that I have heard some people say to me that they didn't think your decision was wise and hope that you get a lot of cooperation. They were speaking more from a practical point of view, by the way, not anything else.

I want to add one more thing before I have to go. The importance of the specialty steel industry to the United States of America is probably not exceeded—I am talking about not just our economic well-being, which is tied in very closely, directly, of course, to our military well-being, but that military well-being is probably exceeded by no other industry in our country.

This Nation specifically cannot, must not find itself in a position where it is dependent upon other nations for tool steels. When you talk about specialty steels, you are talking about tool steels, you are talking about steels for very special purposes and very special applications, steels that are used to make other steels and do other things, and industrial applications that are absolutely vital to this Nation's well-being.

I hope you stress that in your comments. I sort of missed that. I wish you would make a point of that.

I served on the Armed Services Committee for a term, and that is where I really got caught up in this thing, by the way. We had an industrial base panel. My god, if the citizens of this country would realize the independence issue, the degree of dependency problem that we could have in this country, I don't think there is any question that at the very least they would demand strict enforcement of some standard of free enterprise that guarantees at least an opportunity to fairly compete.

What other countries view as a national policy issue we have not yet awakened to. I hope you emphasize that national security point of view a little more often.

Mr. LENA. I appreciate your comments, sir, and will certainly do that. I think it is unfortunate that the country and the people of the country and perhaps even the Congress don't realize how seriously that base of production of specialty steels has already been eroded.

If we had the time, I could go through defining each company and the retraction, the fact of Bethlehem only being the most recent one, having pulled out of the business entirely or eliminating product lines, that it has become, in my opinion, a very, very potentially serious problem for this country, not only with respect to military needs, which is extremely important, but as you pointed out, we manufacture the steels that are the basis of all of the capital goods that go into this country, whether it is in petroleum exploration or refining, in the energy problems, in the environmental problems, defense, capital, any type of capital goods, and that base has been substantially eroded already.

It occurs incrementally over a period of 10 or 15 years so that one doesn't realize how much has happened until he sits down and starts putting down entirely over that time just how much erosion has occurred.

Mr. BAILEY. That long-term investment is a scary thing to embark on when it is so risky. It is asking a great deal of investors and a great deal of people to risk their money and future on when that domestic picture doesn't look real good.

In these capital intensive industries, you are at the very base and heart of it. That is really what I have in my district, Mr. Chairman. I have some specialty steel people, and I want to compliment you folks

Allegheny-Ludlum, for example, has done a fantastic job of reinvestment, and I hope the country gives at least a fair opportunity to compete. That is all you are asking for.

Mr. LENA. Exactly what we want.

Mr. BAILEY. Thank you.

Chairman GIBBONS. Let me ask you, Why did you choose to file a 301 case rather than an antidumping case?

Mr. LENA. I think as the testimony indicates, sir, the 301 case is only the beginning of a series of actions. The 301 case on a broad base calls attention overall to the subsidy problem.

Mr. Peabody before me pointed out the problems in terms of prosecution of cases and the costs that are involved. Our import problem is not just with one nation that is being subsidized. It is with many. It is not just with one company within a nation. It is with many. So, when you add up all of these, it becomes a very, very broad-based problem.

The 301 case is intentionally designed to concentrate on the whole area of subsidies broad based. In addition to that, we are in the process of preparing certain countervailing duty cases and certain dumping cases.

We anticipate very soon, for instance, to be filing a countervailing duty case in the case of stainless steel rod and bar against Spain. We are looking very closely and have information with respect to Germany on a couple of specialty products, including alloy tool steel, and we are getting increasing evidence, accumulating it and analyzing it of dumping on a broad base of stainless steel bars by the Japanese.

All of that is going on at the present time with the 301 case only being the forerunner of what we anticipate will be a series of actions related to specific countries and specific products.

Chairman GIBBONS. Do you have any idea when these cases will be filed?

Mr. LENA. I would expect the first countervailing duty case will be filed within a month to a month and a half, approximately.

Chairman GIBBONS. Fine. I encourage you to file where you have got a case. We want to see our laws tested and see whether they work. If they don't work, I stand ready to see what we can do to correct them.

Mr. LENA. If I may, Mr. Chairman, I would point out that we have not been hesitant to file cases in the past. We filed a dumping case against France on stainless steel rod in 1972, in which it was determined that there was dumping and injury.

There was a case I believe it was on Swedish plate. We had a 201 injury case that was upheld by the ITC that resulted in the quotas, so we have not been hesitant about filing cases in the past.

We are a relatively small part of the total steel industry. We account for about 1 percent of the volume and 9 percent of the selling price, and our resources frankly are limited. We are also faced with the problem that there is no import problem in the in-between periods of the cycle. It is only in a recession, which is extremely unfortunate that the laws are the way they are in the sense of showing injury.

The problem, as much as anything, is planning for capital investment in the future when you have no certainty of what is going to happen to you, and that is the real sad part of the whole situation.

Chairman GIBBONS. Any time you have any suggestions about how we can improve the operation of our laws or what could be done reasonably to save costs in these types of cases, we would be most happy to have them.

Mr. LENA. We would be pleased to submit that to you, sir.

Chairman GIBBONS. Thank you very much.

Mr. LENA. Thank you.

Chairman GIBBONS. We have a panel now from the American Retail Federation and National Retail Merchants Association: Mr. Voyer, senior vice president of import merchandising, R. H. Macy & Co.; Richard A. Maxwell, the divisional vice president, imports, Associated Dry Goods Corp.; and A. Robert Stevenson, vice president of Government affairs, K Mart Corp.

Gentlemen, you may proceed as you wish. Mr. Voyer is listed first, so we will have him first and then Mr. Maxwell and then Mr. Stevenson.

STATEMENT OF GEORGE E. VOYER, SENIOR VICE PRESIDENT, IMPORT MERCHANDISING, R. H. MACY & CO., INC.; RICHARD A. MAXWELL, DIVISIONAL VICE PRESIDENT, IMPORTS, ASSOCIATED DRY GOODS CORP.; AND A. ROBERT STEVENSON, VICE PRESIDENT, GOVERNMENT AFFAIRS, K MART CORP., ALL ON BEHALF OF THE AMERICAN RETAIL FEDERATION AND THE NATIONAL RETAIL MERCHANTS ASSOCIATION

Mr. VOYER. Good evening. I am George Voyer, senior vice president for merchandising and foreign operations of R. H. Macy & Co., Inc..

Together with my colleagues, Bob Stevenson and Dick Maxwell, I am appearing on behalf of the National Retail Merchants Association and the American Retail Federation to present the views of the retail industry on U.S. textile policy.

We do appreciate the opportunity to appear today and to conserve the time of the chairman, we have coordinated our statements in order not to repeat the same points.

Chairman GIBBONS. All right, sir. Thank you.

Mr. VOYER. NRMA and the ARF have also submitted detailed written statements on general trade policy, the Multifiber Arrangement and the administration of the textile and apparel import restrictions. We ask that these be included in the record of the hearings.

Chairman GIBBONS. Yes, sir, I have seen those statements and we will certainly include them in their entirety.

Mr. VOYER. Thank you.

For my part, this afternoon I will discuss the function of imports in a retailer's overall merchandising program and then briefly describe some problems we have encountered as a result of the administration of the textile apparel import restriction program.

When a retailer decides to purchase an item from a foreign source, he does so because the item is an important element of a carefully planned merchandising program and because he has already determined that the item, in the desired quality, quantity, or price, is not available from a U.S. source.

Merchandising programs are set on the basis of anticipated consumer demand and analyses of the selection, quality and availability and price of goods on the market. The goal of a merchandising program is to bring into our stores, at exactly the right time, the goods that our customers will wish to buy at that time and at a price at which they will buy them. If we do that right, enough of the time, we are successful retailers who are then able to keep happy our employers, our stockholders, and our suppliers.

Imports are not a special category of merchandise. They are not placed in separate departments of a store simply because they are imports, and those who plan merchandising programs do not treat them separately.

The many sources of goods from abroad are evaluated in the same way as domestic suppliers. Non-U.S. sources have certain built-in disadvantages, such as the higher cost of doing business with them, including travel to far countries, communications costs in those countries, and the cost of transporting the goods over these distances; the long leadtime necessary for orders; changing quantities, delivery dates, or making cancellations, are more difficult in the foreign markets than in the domestic market; and the need to arrange payments substantially in advance of the receipt of the goods.

For these reasons, and because American manufacturers do a generally excellent job of providing the necessary array of goods, retailers buy the vast bulk of their goods from American suppliers. I can actually quantify this later if it is of interest.

Once a decision is made to purchase an item, the appropriate buyer or buying team arranges the purchase. For an imported item, this is a more complicated process than it is for a domestic purchase.

First, identifying sources of products is a more complicated task. Not only do manufacturers enter and leave the markets, as with domestic producers, but they do so in numerous farflung countries, each with its own business custom and arrangement.

Second, the decision to purchase must be made further in advance, often as long as a year in advance of the delivery to the United States or the first sale to a customer.

Third, the terms of sale most often involve using an irrevocable letter of credit. This holds guaranteed funds for the manufacturers, and so long as the foreign manufacturer supplies the correct item at the appointed time, the money represented by the letter of credit will be automatically transferred to him. This makes interim cancellation of orders next to impossible.

Finally, the retailer must consider the U.S. import restrictions for apparel products. This means assuring himself that the foreign supplier has the necessary quota allocation and will obtain all other papers to assure entry into the United States. It also means evaluating the prospects for unexpected new import problems caused by changes in quotas or the administration of quotas before the goods reach the United States.

We have found this "crystal ball gazing" to be a frustrating and hazardous task. It is also not a task for which retailers are particularly well suited.

All too often we have experienced last minute problems which have delayed or totally prevented the entry of our goods—and the goods are ours because of the use of the irrevocable letters of credit, which do not depend on quota availability.

The sources of these types of last minute problems include classification changes which cause large shifts from one quota category to another, unexpected U.S. demands for new or reduced quotas, and delayed notice to the industry about these situations.

In the last year, we have experienced each of these problems. This fall, the U.S. Customs Service revealed that it had reclassified over 500,000 dozen shirts from Korea, dramatically distorting the quota situation. Yet, Customs had not warned either Korea or U.S. retailers of its actions until the quota was nearly filled.

The result has been an autumn filled with frustration and uncertainty, as the U.S. embargoed merchandise negotiated with Korea lifted the embargo and then reimposed it. In short, the reclassification was unanticipated and the notice of action was too late for us to protect ourselves from its consequences.

My colleague, Dick Maxwell, will describe our unhappy experience with wool sweaters from China. I will note here only that the United States has continued to shut off new sources of supplies of wool sweaters in its actions to restrain imports from Mauritius and Sri Lanka.

As retailers, we continue to be perplexed since we find the U.S. manufacturers of wool sweaters to be completely booked up for at least a year. The wool sweater quotas, therefore, continues to surprise us in light of market conditions as we know them.

My own main objection to the quota system is its distortion of the marketplace. We must buy from manufacturers who have quotas, and not from manufacturers who don't. Even if the ones who don't have quotas make a better product, at a better price.

We must seek out countries not yet burdened with quotas, running considerable risk, placing orders with untried resources and, indeed, untried countries. The normal criteria of quality, price and reliability of resource must now take second place behind the prime criterion of quota availability.

This all runs absolutely counter to our experience, knowledge and even instincts as merchants.

Another serious objection to the system is on the grounds of cost. We haven't been able to measure the cost to us from the marketplace disruption, but we have a fairly clear measure of what are called quota costs.

In the key market of Hong Kong, for example, quota is a commodity which is bought and sold. Examples of the prices of this commodity during the course of 1981 follow. Wool sweaters, $35 to

$40 per dozen in the months of February and March. These are U.S. dollars, not Hong Kong dollars.

Chief-value cotton blouses, $25 to $30 per dozen in the months of April and May.

Chief-value cotton pants, $18 to $20 in the months February through August; chief-value synthetic blouses, $18 to $20, September through October. Chief-value cotton knit tops, very reasonable buy, only $6 to $8 November and December. Chief-value cotton coats, $35 to $40 in the months of November and December.

These prices in U.S. dollars represent what we pay for essentially a piece of paper authorizing shipment under the quota system. These charges come on top of the actual cost of the goods involved. To add insult to injury, we pay duty on these quota charges. The U.S. customer ultimately repays us for these charges. It is included in the retail price of the merchandise we put on our counters.

As our written statements indicate, we believe this situation calls for Cabinet-level review and policy direction, improved data for the use of all concerned and the establishment of procedures to insure due process.

Thank you.

[The prepared statement follows:]

Statement of the National Retail Merchants Association

This statement presents the views of the National Retail Merchants Association ("NRMA") on the appropriate direction of United States trade policy in general and on several specific aspects of that trade policy. We appreciate the opportunity to present these views and would be pleased to explain or elaborate on the comments made in this statement.

By way of background, NRMA is a national nonprofit trade association composed of over 3,700 members who operate more than 40,000 department, chain and specialty stores in the general merchandise retail industry. Our members have an aggregate annual sales volume in excess of $125 billion and employ over 3 million workers.

NRMA and our colleagues in the retail industry have been consistent advocates of the removal of barriers to international trade. We believe that minimizing such artificial restraints on the worldwide marketplace has obvious, significant benefits for American consumers and American exporting industries (and the workers in those industries), as well as for our own businesses. Further, we believe that the competition from worldwide markets will, even in the relatively short term, strengthen those American industries which compete against imported products. Even in the rare case where an American industry must undergo substantial adaptation due to such competition, we believe that that industry will often strengthen itself in response. The overall result of a liberalized trade policy is a much healthier American economy.

This statement presents the theoretical and practical underpinnings of liberalized trade policies, drawing examples from areas where we have recent experience. In addition, the statement discusses the foreign policy benefits of liberalized trade. Finally, the statement presents NRMA's concerns with some of the of the current policy-making processes, particularly in the area of textile and apparel trade.

I. ECONOMIC BENEFITS OF LIBERALIZED TRADE

Barrier free trade, whether within one country or among nations, is a basic tenet of free market economics. Quotas, tariffs and other trade restrictions are government interventions in the market just as much as the economic regulation of airlines, trucks and trains. The international trading system can and should be "deregulated" in the same way as the transport industries have been deregulated over the past few years. The market inefficiencies and distortions accompanying the use of trade barriers should be recognized, and our policies should be designed to eliminate, or at least reduce them through removal or substantial reduction of the barriers.

NRMA is pleased that the current Administration has proclained its understanding of this essential fact and has pledged its allegiance to liberalized trade. The Administration has done so in a number of forms, most notably in its "White Paper" on trade policy, presented by U.S. trade Representative William E. Brock in July testimony before two Senate subcommittees. The White Paper states:

"A strong U.S. economy is our goal. Free trade, based on mutually acceptable trading relations, is essential to the pursuit of that goal

"International trade is, and will continue to be, a vital component of the United States' economy. The trade policy of the Reagan Administration will complement domestic economic programs which are designed to increase employment and output and reduce inflation.

"One of the principal requirements of a strong U.S. economy is the maintenance of open markets both at home and abroad. The United States is more dependent on international trade than at any time in recent history. Exports generate higher real income and new jobs, and imports increase consumer choice and competition in a wide range of goods and services.

"The United States is increasingly challenged not only by the ability of other countries to produce highly competitive products, but also by the growing intervention in economic affairs on the part of governments in many such countries. We should be prepared to accept the competitive challenge, and strongly oppose trade distorting interventions by government.

"We will strongly resist protectionist pressures. Open trade on the basis of mutually agreed upon rules is in our own best economic interests, and is consistent with the Administration's commitment to strengthen the domestic economy."

President Reagan reiterated the commitment to this policy as part of his Administration's economic program and its underlying philosophy in his September 29 address to the Board of Governors of the World Bank and International Monetary Fund, when he said:

"My own government is committed to policies of free trade, unrestricted investment, and open capital markets."

More recently, at the just-completed hearings of the Trade Subcommittee of the House Ways and Means Committee, several Cabinet and sub-Cabinet officials stated and restated the U.S. position on trade. Ambassador Brock summarized the posture:

"Free international competition in an open, global trading system is in the interests of all countries not only the United States. The free flow of goods and services provides an ever increasing market for all trading nation."

At the same hearings, Council of Economic Advisors Chairman Murray L. Weidenbaum explained how a free trade policy is a logical and essential counterpart to the Administration's domestic economic policies:

"As our White Paper makes clear, free trade . . . is both philosophically and pragmatically the international counterpart of our domestic economic program. Both in domestic and international markets, we are trying to reduce government-imposed barriers to the free exercise of individual initiative, risk-bearing, and entrepreneurship; that is, we strongly favor primary reliance on private enterprise as the engine of economic growth and progress."

The Administration's basic approach to trade policy will yield economic benefits for the nation for a number of reasons. In the present, as well as the long run, liberalized trade works efficiently and effectively to revitalize the domestic economy by allocating resources into industries that are competitive (or have the potential to compete) and by increasing world markets for our exports. Liberalized trade also indirectly strengthens our economy by boosting the world economy, and more especially, the economies of our trading partners. Moreover, liberalized trade reduces the considerable inefficiencies that result from the use of quotas to protect domestic industries.

A. *The Dynamic Benefits of Liberalized Trade*

The first means by which liberalized trade revitalizes our economy is by reducing the inflation that is caused by restriction of imported consumer goods in the market-place. A recent empirical study has found the prices of imported consumer goods to be 10.8 percent lower than comparable domestic goods; the result of such lower prices would amount to a direct saving to consumers of more than two billion dollars per year.[1] Moreover, the presence of imports has an indirect influence on the prices of domestic products that may be even greater: the mere presence of imports in the marketplace—even if they are at the same prices as domestic goods—holds down the prices of domestic goods by raising the total supply, and thus leveling off supply and demand at a lower price.[2] While it has been argued that retailers rather than consumers reap the benefits of the lower cost of imports through higher markup on the imported items, this ignores both the hard evidence that, regardless of markup, import prices are considerably lower[3] and the fact that any higher markups on imported products are only reflections of the higher shipping costs, longer lead time required for ordering, impossibility of returning unsold goods, and generally greater risks involved with retailing imported goods.[4]

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[1] W. Cline, "Imports and consumer Prices: A Survey Analysis," 55 Journal of Retailing 1 at 24 (Spring, 1979). (Cited hereafter as "Cline.")

A second means by which liberalized trade promotes a healthier domestic economy is by expanding the market for our exports. If barriers—both tariff and non-tariff—to trade are relaxed, other nations are encouraged to reciprocate under the principles of the General Agreement on Tariffs and Trade ("GATT"); conversely, increasing such barriers invites retaliation. Particular products that the United States wishes to export in greater quantities (technology and services, cotton and manmade fibers are examples) will find a more open market in those countries which are not overly-restricted by our trade policy. Moreover, it is precisely those less-developed countries in Latin America and Asia—such as Taiwan, Korea and Brazil—that the U.S. increasingly depends upon as markets for our exports, that have been most restrictd by our trade policy, and thus are less able to earn the currency needed to purchase our exports.[5]

A third means by which a liberalized policy toward imports would revitalize our economy is the effect such a policy would have upon product availability and selection. Greater product availability and selection is a major factor in spurring consumer demand. Imports serve markets that domestic producers often cannot, or choose not, to reach. For example, the Orderly Marketing Agreement with Taiwan for footwear produced a situation where the high quality, lower-priced footwear produced by Taiwan was simply removed from the American marketplace; consumers were forced to pay more, or get lower quality.[6] Ironically, these restrictions on footwear from Taiwan and Korea did not produce a greater opportunity for U.S. manufacturers to supply the market. The lower-priced footwear produced in the U.S. is of an entirely different type than the Asian imports, resulting in the exclusion from the market of certain kinds of shoes that U.S. producers cannot make. (Lower-priced footwear is produced by U.S. companies only in specialized areas using the capital intensive injection-molding technology.[7])

Another example of this problem can be seen in the domestic television market. U.S. producers were generally not sensitive to market demands in terms of size and style of television set, and chose to ignore the important private-label television market created by large volume retailers. Much of the success of the Japanese imports in the mid-1970's was a result of their greater willingness to supply the product that American consumers indicated that they wanted.

A final example is provided by the apparel industry in Great Britain. A recent study found that the imposition of tighter import restrictions did not create any greater output by British apparel producers.[8] Despite the continuing demand for certain types of apparel, the retailers did not turn to British manufacturers for several reasons: (1) The British goods did not represent the same "value for money." (2) Deliveries from British manufacturers tended to be unreliable and not available in sufficient quantities. (3) British manufacturers were less attuned to changes in fashion. (4) There was poor liaison between British manufacturers and retailers.[9]

Perhaps the most important means by which a liberalized trade policy will revitalize our economy is by increasing the competitiveness of our industries. A liberalized trade policy forces American industry to redirect the allocation of national economic resources into those existing industries, or other new ones, that are truly competitive, both domestically and worldwide. Import restrictions result in an inefficient allocation of resources into industries or production methods that, for a multitude of reasons, can no longer compete.

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[2] Id. at 4–5.

[3] Id. at 24; see also National Retail Merchants Association, "How American Consumers Benefit from Imports" at 5–7 (1977).

[4] Id. at 8–12.

[5] See Statement of Ambassador William E. Brock, III, United States Trade Representative, Before the joint Economic Committee, United States Congress, February 24, 1981, at 9–10.

[6] Hearing before the International Trade Commission, March 9, 10, 1981, (remarks by Levy and Barringer) on the Extension of the Orderly Marketing Agreements for Non-rubber Footwear, at 629, 669.

[7] *Id.* at 415, 152, 683 (Kuhn, Banoces, Barringer).

[8] See Consumer's Association, "The Price of Protection," a "Which?" Campaign Report (London, 1979) at 19–22.

[9] *Id.*

For example, while the textile and apparel industries are often lumped together, they represent the two poles of competitiveness. The textile industry has turned itself around in the last ten years, largely through an infusion of new technology and new management techniques.[10] Particularly notable was the industry's willingness to abandon expensive specialty items unsuited to U.S. style production—such as woolens and worsteds—and shift to more basic fabrics.[11]

The apparel industry, in contrast, has generally not adapted well to competition from foreign-produced clothing. Despite twenty-five years of protection through import restrictions, the industry has not focused its resources on products where it is strongest. Rather, it has continued to produce goods for which foreign producers have much lower labor costs, which is the largest cost factor in the industry. This has led the industry to demand, with considerable success, tighter and tighter quotas.

In economic terms, the apparel industry is not absolutely inefficent, but still suffers from "comparative disadvantage" because other countries can provide higher returns for the same investment in labor, capital, and other resources.[12] Such a "comparative disadvantage" may also exist between a certain industry and other types of industry in the same country, so that if an industry cannot compete internationally, it inevitably "penalizes" and "taxes" other domestic industries by diverting resources from those industries that are "competitive."[13] The same conclusion was reached in a study of import policies by the research institute of the Congressional coalition of Members representing the region (Northeast and Midwest) that has been hardest hit by the competition from abroad.[14]

Some apparel companies have responded appropriately to their economic situation. They have concentrated their U.S. production on items for which price competition is less important in the market, emphasizing the quality and "status" of their products, and have themselves turned to imports for the balance of their "line" of goods. Given the posture of the apparel industry on import restraints, it is surprising to many people to discover that several of the largest importers of clothing are actually the domestic producers who are calling for higher quotas.

B. Quotas Are Not Effective or Efficient

The use of quotas on imports to aid domestic industries while they adjust to new competition is not an efficient or effective means of revitalizing a troubled industry, or our economy in general. First, quotas are not targeted narrowly enough to aid a particular company: for example, the quota on television imports was terribly inefficient because it was aimed at protecting the entire U.S. television industry even though most major U.S. companies—Zenith, RCA, Magnavox, and General Electric—were operating profitably because they adjusted to import competition.[15] In other words, quotas are unable to adjust for the failures of specific companies to make prudent business decisions in the face of competition. Industry-wide solutions result in the successful domestic companies receiving an even larger share of the market.[16]

A similar problem occurs when two industries that have traditionally been related are lumped together for the purpose of trade policy even though the two industries are in a very different market position presently. The textile and apparel industries are the most obvious example. While the textile industry has revitalized itself and its exports are booming,[17] the apparel industry has not had similar success. The reasons for the apparel industry's difficulties when faced with competition are peculiar to that industry, and the textile industry should not be linked to apparel in our trade policy.

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[10] The Washington Post, "Profits, Progress Loom Large for Textile-Makers," p. H1, March 15, 1981. (Cited hereafter as "Washington Post, 'Profits' ".)

[11] Id.

[12] D. B. Keesing and M. Wolf, "Textile Quotas against Developing Countries," Trade Policy Research Center (1980) at 150. (Cited hereafter as "Keesing and Wolf".)

[13] Id. at 150–1.

[14] P. Tropper, "Moving from Reaction to Anticipation in U.S. Import Policies." Northeast-Midwest Institute (October 1980) at 14; see also H. Kissinger, "The White House Years", cited in Washington Post, "Will Protectionism Protect Us?," (column of Hobart Rowen), April 1, 1981. (Cited hereafter as "Kissinger".)

[15] Comments of the NRMA, Regarding Television Receiver Imports, submitted April 25, 1977, to the Office of the Special Trade Representative, at 3–4, citing quarterly sales figures reported in Television Digest April 18, 1977, at 8.

[16] Id. at 4.

[17] Washington Post, "Profits"; American Importers Association, "Politics, Protection and Domestic Industry," (position paper submitted to the Subcommittee on Trade, House Ways and Means Committee), July 21, 1980, at 4–9.

A second illustration of the ineffectiveness of quotas is the phenomenon of the foreign markets in quotas themselves. In Hong Kong, for example, the government distributes portions of the overall quota to individual manufacturers, who in turn sell their quota allotments to other manufacturers who have more product to sell than their quota allows. In the case of wool sweaters recently, this market in quotas pushed the cost of the quota itself to four to five dollars per sweater. Similarly, the cost of a quota in Taiwan for footwear last year was one dollar per pair.[18] Such cost is directly translated into increased prices for the consumer.

A third way in which quotas are ineffective is the phenomenon of "trading up." When exports of a foreign manufacturer's product is serverely limited in quantity by a quota, the manufacturer often "trades up" by exporting the more expensive lines of his product. This can be damaging to U.S. producers, as was the case with footwear from Taiwan: instead of exporting their lower-priced footwear which had filled a space in the market that had not been filled by American producers, the Taiwanese "traded up" to the middle-price categories where U.S. producers compete most effectively, and thus effectively increased competition between U.S. producers and Taiwanese.[19]

A fourth example of the ineffectiveness of quotas lies in their inevitable by-product: retaliation. Quotas are counter-productive to the extent that they engender restrictions on our exports by those countries that we have restricted. It is of no use to America to protect its less-competitive industries if the result is to penalize succesful, exporting industries by encouraging barriers to such exports. The U.S. has, ironically, suffered from retaliation against its textile exports to Great Britain, with the British establishing quotas on U.S. polyester filament yarn and nylon carpet yarn in 1980. Great Britain, in turn, was forced to abandon its effort to force tight quotas on Indonesia, when the Indonesians cancelled several joint ventures planned for Indonesia by British companies.

A final example of the inefficiency of quotas is the recent phenomenon of the shifting of production—and, therefore, the source of U.S. imports—from one small, less-developed country to an even smaller less-developed country in an effort to avoid quotas. The waste involved in a company periodically setting up new operations is considerable. The latest haven for "quota-dodging" was tiny Mauritius, where exports of wool sweaters rose in direct response to U.S. limits on wool sweater imports from China, which led to U.S. imposition, unilaterally, of a quota on sweaters from Mauritius. It is easy to speculate that sweater manufacturing will now shift to another small island in the Indian or Pacific oceans.

II. FOREIGN POLICY AND NATIONAL SECURITY IMPLICATIONS

There are several ways in which trade policy affects our international relations: first, if we are to have strong allies, they must be economically sound. A liberalized trade policy strengthens allies such as Taiwan, Korea, and other developing countries by opening the natural market for their products. This, in turn, gives them the revenues to provide for their own welfare and security, which aids the U.S. in its strategic posture.

Second, our relations to countries such as the People's Republic of China are very sensitive to trade policy. China, as a result of its growing apparel exports, was forced in 1979 to accept import restrictions by the U.S. and, in a sense, lose its innocence. These restrictions also cut off an important source of currency for China, which has recently cancelled several long-term projects with Western companies due to a shortage of money. As China's exports continue to grow, quota issues, particularly those for textiles and apparel, could cause serious friction in its complicated relationship with the West.[20]

Finally, the U.S. was a founder, and is still a strong supporter, of the GATT principles and mechanism. These principles of ever-increasing expansion and non-discrimination in the world trading markets are as important to our economy today as they were thirty-five years ago. The present Administration has reaffirmed these principles as basic to its economic philosophy and essential to the revitalization of the economy. As Henry Kissinger has stated these principles: ". . . [P]rotectionism is above all an untenable position for a nation that seeks to be the leader of the alliance of industrial democracies. Economic clashes of mounting bitterness could undermine that very unity of interest and aspiration that is the bulwark of our freedom." [21] U.S. abandonment of those principles calls into question the stability of our worldwide relations.

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[18] Post Hearing Brief on Behalf of the NRMA, before the U.S. International Trade Commission, re: Investigation No. TA-203-7 (Non-rubber Footwear) at 6.

[19] Brief on Behalf of the NRMA, before the Trade Policy Staff Committee, Office of the U.S. Trade Representative, re: U.S. ITC Investigation No. TA-203-7 (Non-rubber Footwear) at 6-7.

[20] A. Doak Barnett, "China's Economy in Global Perspective" (The Brookings Institution, 1981) at 531.

III. TRADE POLICY DEVELOPMENT PROCESS

NRMA believes that the current process for developing trade policy has worked reasonably well in most areas. The economic advisors to all recent Administrations, both Republican and Democratic, have properly viewed each proposal for increasing or retaining barriers to trade in a broad economic context and have concluded that our nation's interest is not served by taking such restricting actions. This has led Presidents, again both Democratic and Republican, to reject or substantially modify many proposals for trade barriers.

Where barriers have been erected, notwithstanding the advice of the economic advisors, the reasons have invariably been political. Nowhere is this more true than in the setting of U.S. policy on textile and apparel imports. By virtue of their political power, the U.S. industries and unions involved in producing these products have gained the greatest "protection" against import competition of any sector of our economy.

A more complete review of the advancing restraints—from Japan's "voluntary" limits on cotton product exports in the late 1950s through the Short and Long Term Cotton Agreement of the 1960s, the chaos of the 1969–71 period, and two terms of the Multifiber Arrangement ("MFA")—is provided in NRMA's paper on this year's negotiations to extend the MFA. For the purposes of this statement, two points are of note. First, the development of protection in these areas has been totally outside of the normal channels of both U.S. and international trade policy-making. This highlights the political nature of the decisions which have been made. It has also facilitated the making of politically, rather than economically based, decisions. Second, the decisions in these areas has been made with virtually no effort to review their overall economic context. This year's MFA negotiations were entered and have been conducted without benefit of a thorough review of the effect of continuing quotas on the American economy as a whole or even of the current conditions in the textile or apparel industry. To the extent that any economic analysis has been conducted, it has not been subjected to the public scrutiny and comment normally associated with policymaking in this country. In short, our negotiators do not have the sort of economic analysis which should be the basis for our negotiating postures.

NRMA and other interested groups have sought a current economic review by the Council of Economic Advisers of the U.S. textile and apparel trade policy, including evaluations of the actual impact of import competition on the textile and apparel industries and the impact of quotas on other elements of the economy, for use in setting our negotiating positions for the MFA and related bilateral agreements.

The 1981 MFA negotiation process has been a continuation of the system which has existed for a number of years. In contrast to other trade policy decisions, which are made following the relatively disciplined administrative and analytic process conducted by such agencies as the U.S. International Trade Commission and the U.S. Trade Representative's Office, textile and apparel trade policymaking is conducted in secret and through informal procedures by the Committee for the Implementation of Textile Agreements ("CITA"), dominated by the Commerce Department's Office of Textiles.

Notwithstanding the fact that the MFA sanctions only those quotas which are necessary to remedy "market disruption" or "threat of market disruption"—concepts closely akin to the "escape clause" injury tests—CITA has relied solely on the volume of imports as the only criterion for seeking or unilaterally imposing quotas on imports of these products. No review of whether imports are causing any actual harm to U.S. industries has been seriously undertaken by CITA, a fact for which it has recently been chastised by the U.S. Court of International Trade.[22] Although CITA publishes notice of and nominally seeks comments on its actions, the facts are that the comments are sought after action is taken and that comments have been consistently ignored.

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[21] Kissinger, "The White House Years."

[22] *Associated Dry Goods Corp.* v. *United States*, 521 F. Supp. 473 (C.I.T. 1981), case remanded for determination of mootness, ———F.2d ——— (C.C.P.A. 1981).

NRMA is also convinced that it is essential that there be a revision of the process by which CITA determines the need for future quotas.[23] This process should include opportunity for public comment in advance of actions by CITA, and a requirement that CITA prepare and make available to the public (deleting any necessarily confidential information) economic analyses of the state of the industries involved in the contemplated action and of the likely impact on other economic segments if the restrictions are imposed.

One final note on the textile and apparel trade policy process: For a number of years, the negotiators for the U.S. have been advised by a group of textile and apparel industry and union representatives. The "industry advisers", as they are known, even accompany the negotiators to the sites of their sessions with foreign government representatives. They are informed of the progress of the negotiations and asked for advice based on the status of negotiations. No retailers, importers, or consumers have been afforded this "inside" status. Only within the last two months have retailers and importers been promised some of the privileges granted to the advocates of protection. While NRMA appreciates the expanded role to be given to retail industry representatives, we continue to believe that the whole process has been and is a travesty. No interested private group should be afforded the power that these groups have had.

IV. CONCLUSION

We have explained how a more liberalized trade policy can revitalize our economy. That revitalization will be the product of the dynamic (used in its economic meaning of stimulative) benefits that result from liberalized trade: lower inflation resulting from the presence of lower-priced imports; greater access to world markets for our exports; greater purchasing power (to buy our exports) in the developing countries; greater product availability and selection in domestic markets, in turn spurring consumer demand; and last, but certainly not least, increased competitiveness in our industries produced by a more efficient allocation of resources toward industries that can achieve a high return on labor and capital.

A more liberalized trade policy will reduce the tremendous inefficiency of quotas which produce numerous economically wasteful phenomena: poor targeting of companies that are actually ailing within an industry; the trade in quotas themselves which result in added costs to products; the "trading up" by foreign competitors, which actually causes greater competition to U.S. producers in their more successful product lines; and lastly, retaliation by nations whom we have imposed restrictions upon.

A more liberalized trade policy will increase our national security by strengthening our allies and avoiding confrontation and mistrust on the part of nations with whom we wish to trade, such as China. Moreover, a liberalized trade policy will reaffirm our adherence to the principles of GATT and renew our leadership among industrial democracies.

STATEMENT OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION, ENDORSED BY THE AMERICAN RETAIL FEDERATION

INTRODUCTION

The retail industry has found the administration of the textile and apparel import restriction program to be a costly, burdensome and frustrating encounter with the federal government. This is the result of lack of notice about intended actions, shifting ground rules, and some outright violations of the government's obligations. All of this is defended as necessary to protect American businesses and workers. But it is American retailing and our workers and customers who are suffering as a result. Every time goods are embargoed, it is our money that pays for the storage and damage to the goods, our sales that are lost due to the lack of goods of comparable quality and price, and our profits that suffer from these losses.[1] Ultimately, American consumers pay for all of this in higher prices and reduced product selection and quality.[2]

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[23] See NRMA, "The Administration of the Textile and Apparel Import Restriction Program," submitted to the Trade Subcommittee of the House Ways and Means Committee during its hearings on U.S. trade policy, December 15, 1981.

[1] Some of these embargoes result from the failure of the exporting countries to adequately control their quotas. This is, of course, a problem which would not arise if the quotas did not exist.

This statement is submitted on behalf of the National Retail Merchants Association ("NRMA"), and is endorsed by the American Retail Federation ("ARF"), in conjunction with the appearances of witnesses on behalf of NRMA and ARF. NRMA is a national, nonprofit trade association composed of over 3,700 members operating more than 40,000 department, chain and specialty stores in the general merchandise retail industry. ARF is an umbrella organization for the retail industry. Its membership consists of 50 state retail associations, as well as that of the District of Columbia, 32 national retail associations, and corporate members ranging from very large multi-unit enterprises to the "mom and pop" corner stores. As an industry, retailing accounts for over one-quarter of the Gross National Product and employs over 14 million persons.

IMPORTS AND AMERICAN RETAILING

Retailers treat imports as a part of their overall merchandising programs, which are set on the basis of anticipated consumer demand and analyses of the selection, quality, availability and price of goods in the market. The relative weight which is assigned to given factors varies from retailer to retailer, product to product, and year to year. In an otherwise perfect world, retailers purchase goods from those suppliers who offer the combinations of these factors which most suits their needs. The goal of the merchandising program is, of course, to assure success for the retailer, with resulting benefits to its customers and all of its suppliers, as well as to its own management and owners.

In this context, imports are not a special category. They are not placed in separate departments of a store simply because they are imports, and those who plan merchandising programs do not treat them separately. The many sources of goods from abroad are evaluated in the same way as domestic suppliers. Non-U.S. sources have certain built-in disadvantages, e.g., the higher costs of doing business with them (travel, telephone, goods transportation, etc.), the long lead times necessary for orders, their lack of flexibility on changes in orders (quantities, delivery dates, cancellations, etc.), and the need to arrange payment substantially in advance of receipt of the goods. For these reasons, and because American manufacturers do a generally excellent job of providing the necessary array of goods,[3] retailers buy the vast bulk of their goods from American suppliers. On the other hand, retailers also choose to purchase goods from a foreign supplier when, in particular instances, other factors outweigh the disadvantages.

Once a decision is made to purchase an item, the appropriate buyer arranges the purchase. For an imported item, this is a more complicated process than it is for a domestic purchase. First, identifying sources of products is a more difficult task. Not only do manufacturers enter and leave the market, as with domestic producers, but they do so in numerous, far-flung countries, each with its own business customs and arrangements, not to mention the inevitable language barriers. Second, the decision to purchase must be made further in advance, often as long as a year ahead of delivery to the U.S. or the first sale to a consumer. Third, the terms of sale often involve using an irrevocable letter of credit. This holds guaranteed funds for the manufacturers and has the effect of transferring the ownership of the product to the retailer at the time the letter of credit is transferred, even though the product is not yet made. So long as the foreign manufacturer supplies the correct item at the appointed time, the money represented by the letter will be automatically transferred to it. Thus, the process is out of the retailer's hands months before the garments are even finished. This makes later cancellation of the order next to impossible.

Finally, the U.S. import restriction system must be taken account of. The problems we have had with this system are discussed below, and it is noted here only to underscore the fact that existing quotas are factors which further complicate the retailer's normal business operation. The possibility of quotas imposed after orders are placed and letters of credit are issued is an even more difficult problem to handle.

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[2] Retailing has explained and will continue to explain why elimination of these quotas would be beneficial to the U.S. economy generally and to American consumers particularly. For the purposes of this statement, however, we will focus on the U.S. implementation of this system, including decisions to demand or impose quotas and the administration of the quotas themselves.

[3] In many instances, retailers buy imported merchandise from American apparel companies rather than directly from foreign sources. In fact, U.S. apparel companies have become an increasing factor in supplying imported items, using imports to add diversity to their product lines.

SUMMARY OF RECOMMENDATIONS

As a result of our experience over the past several years, and specifically this year with the negotiations on the extension of the Multifiber Arrangement, we have a number of recommendations for improving the administration of the textile and apparel import restriction program.

1. *Cabinet Review.*—An appropriate Cabinet-level body—the Cabinet Council on Commerce and Trade or the Trade Policy Committee or both—should conduct a full review of the U.S. textile and apparel program. Interested members of the public and affected industries and workers should be afforded the opportunity to provide their views as part of this review. The result should be guidelines for U.S. negotiators on the parameters of acceptable negotiating positions and a policy for harmonizing this program of protection with the overall U.S. policy of free trade. At a minimum, our negotiators should be instructed to strictly adhere to the internationally agreed upon terms of the MFA and our bilaterals.
2. *Better Information.*—The government should establish a regularized system of collecting, disseminating and analyzing data on the condition of the U.S. textile and apparel industries and on their efforts to compete in the marketplace. This will allow all interested parties to engage in informed discussions over proposed U.S. actions. At present, data on the U.S. industries is either not available or is out of date. We suggest that the U.S. International Trade Commission, which has substantial experience as a result of its "escape clause," antidumping and countervailing duty responsibilities, should be asked to coordinate this effort.
3. *Due Process.*—The government should establish a system of advance notice and consultation far beyond current efforts. All interested parties should be afforded equal rights of participation. This process should be established to allow advance consultation prior to negotiations on basic multilateral and bilateral agreements and, especially, prior to any mid-term changes in those agreements.

PROBLEMS WITH CURRENT U.S. ACTIONS

Over the past several years, the administration of the textile and apparel import restriction program has caused retailers hardship on numerous occasions. The problems have occurred across nearly all product lines and have involved nearly every exporting country. The following discussion reviews the three major types of governmental action which have caused difficulty, with a limited number of examples for each of the areas.

1. *Departures from Agreements and Policies.*—The U.S. is a signator of the Multifiber Arrangement ("MFA") and more than twenty bilateral textile and apparel agreements. The terms of the MFA and the bilaterals are supposed to provide certainty to those affected by them, since the MFA provides guidelines for the content of the bilaterals and the bilaterals are binding commitments of the governments which enter them. The recent history of U.S. actions, however, is one of straining the provisions of the MFA, failing to abide by the terms of the bilateral agreements, and forcing other governments to change the terms of the agreements in the middle of the period for which they were negotiated. This has resulted in significant problems for American retailers, who have borne the costs of numerous unexpected actions to limit imports.

In the last 2 years, the U.S. has demanded mid-term [4] changes in bilateral agreements with our principal textile and apparel suppliers, upsetting not only the industries in those countries but also the buying plans of American retailers. Typically, the changes have reduced or eliminated quota growth and flexibility rates and have been negotiated early in the same year to which they apply. For instance, such reductions were demanded and obtained from Korea, Taiwan and Hong Kong for calendar year 1981 in negotiations conducted in late February 1981. Retailers who use quota levels in making their buying plans had already placed orders for goods covered by these reductions and were forced to cancel some orders, ship goods earlier than planned, or gamble that the activities of the countries and other retailers would avert an embargo.

The U.S. has also consistently demanded or unilaterally imposed quotas solely on the basis of the size of import levels, notwithstanding the fact that the MFA [5] and most of the bilaterals specify that quotas are justified only in cases where the imports at issue are causing or threatening to cause "market disruption." Market disruption is defined as "serious damage" to the U.S. industries producing those products. Basic international trade law and standard market analysis use mere volume of imports as only one factor in determining whether an industry is injured by the imports. Yet, in the context of this program, the U.S. has not analyzed other indicia of industry health—profits, production employment, capacity, capacity utilization, etc.—or the specific relationship of the imports to industry conditions.

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[4] These agreements typically cover multiyear periods, in part to provide certainty for foreign manufacturers and American purchasers of the imports.

[5] MFA, Annex A.

The failure to take these economic indicators into account has been a flaw in every U.S. request for consultations, at least in the available U.S. analyses of the bases for its requests. A good example of this is the case of wool sweaters. In addition to the specific problem with China, discussed in detail below, the U.S. has imposed quotas on two countries during the last year—Mauritius and Sri Lanka—because of increased imports from those countries. Yet, the U.S. wool sweater industry has been thriving, "suffering" only from more orders for its products than it can fill.

For retailers, U.S. actions in the last year on wool sweaters have caused enormous frustration, making it difficult to meet consumer demand for these sweaters. Presently, still more limits on new suppliers are in the offing, with rumors of quotas being placed on the Maldive Islands and Bangladesh.

This last example illustrates another inconsistency on the part of the U.S. For some time, the U.S. has declared that its policy is to limit growth from the "developed" exporting countries—generally, Hong Kong, Korea, Taiwan and (recently) China—in order to allow small, poorer countries to enter the markets. Yet, the U.S. has systematically shut off new sources of wool sweater supplies. Recent U.S. actions to control imports of cotton trousers (categories 347/348) are very similar, involving most of the same developing countries.

2. *Lack of Notice.*— One of retailing's major complaints about the administration of quotas is that insufficient notice is given on significant U.S. actions. The U.S. gives us too little information, and the notices are far too late to allow retailers to avert serious economic problems without great effort, since orders are placed and letters of credit are provided months before the goods arrive in the U.S. We believe that the Administration should, as a matter of fundamental fairness,[6] undertake a thorough revamping of the system under which the textile and apparel imprort program is implemented. At the very least, a mechanism must be developed to provide sufficient notice to retailers of impending U.S. actions.

Imports of acrylic sweaters from Korea in 1980 provide a graphic example of the problems of the current system. The U.S. and Korean governments agreed in February of that year to reduce the 1980 quota for these sweaters by some 300,000 dozen, or 10 percent of the total quota. The U.S. government failed to inform retailers of this change until September 25, with the result that the quota was filled in November, due in part to overbuying based on the original quota level. Warehouse cost alone run into the tens and hundreds of thousands of dollars when embargoes like that occur.

3. *Mismanagement.*—Even after the quotas are imposed implementation problems can be major. This fall, retailers were struck an unexpected blow when the Committee for the Implementation of Textile Agreements ("CITA") revealed that U.S. Customs had classified as "non-dress"—and charged against the "non-dress" quota—nearly 500,000-dozen shirts from Korea, reversing the "dress" categorization which Korean manufacturers had given to these shirts and under which retailers and others thought the shirts had entered. Customs had not informed anyone—Korea or the importers—of the reclassification until the "non-dress" shirt quota was all but full. Customs had not informed anyone because CITA had not instructed it to do so.

Korea, of course, had issued enough quota to its manufacturers to allow them to export the total non-dress shirt quota, without allowing for such a massive reclassification by the U.S. Retailers and others had ordered against those quota allocations, but were suddenly faced with the fact that these entries would not be allowed and that goods arriving just in time for the crucial Christmas selling season would be held up until next year. In fact, an embargo was imposed in early September.[7]

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[6] In the suit brought by Associated Dry Goods Corp. challenging the embargo of Chinese wool sweaters, this point was raised as a challenge to the Constitutionality of the U.S. actions. The basis for the Constitutional claim was that ADG had been deprived of its property without due process of law, but the court did not rule on this issue in its decision. *Associated Dry Goods Corp.* v. *United States,* 521 F. Supp. 473 (C.I.T. 1981), case remanded for determination of mootness, —— F. 2d —— (C.C.P.A. 1981). (Cited hereafter as "*ADG v. U.S.*") A copy of the Court of International Trade's decision is attached to this statement as Appendix B.

To add insult to injury, CITA promptly proclaimed that the problem was all the fault of the Koreans and the importers. The U.S. entered negotiations with Korea with this attitude and proceeded to compound the problems already caused by U.S. mismanagement by forcing the Koreans to reduce next year's quota by 350,000-dozen shirts, after leading the Koreans to think they had agreed to something else entirely.

These kinds of problems occur with disheartening regularity, causing endless problems for those caught in the middle—retailers.

WOOL SWEATERS

The story of U.S. actions to limit imports of wool sweaters from the People's Republic of China epitomizes the retail industry's problems with U.S. administration of apparel import restrictions. The very fact that the U.S. imposed such restrictions in this case was a surprise on a number of levels. Then, the failure of U.S. negotiators to deal fairly with retail interests compounded our frustrations. Even as late as the day before the U.S. and China signed the quota agreement ending the episode, U.S. negotiators told an official retail advisory committee that no agreement was in sight. In a situation where retailers were making day to day decisions on what to do with hundreds of thousands of sweaters, this was a truly shocking lack of sensitivity to the legitimate interests of these retailers. The following summary of the China sweater situation is provided to demonstrate more fully the significance of the problems outlined above.

1. *Background of the United States-China Trade in Wool Sweaters.*— The reopening of trade with China was one of the most significant international economic events of the past thirty years. For retailers, it offered the promise of another major source of consumer products, especially labor-intensive apparel items. Retailers were encouraged by the U.S. government to travel to China, and were greatly impressed by what they saw. For American consumers, the retailers saw great values—high quality, reasonably priced apparel items.

When the wool sweater market turned hot in 1979 and 1980, retailers were squeezed for supply. American manufacturers simply could not supply enough wool sweaters to meet the demand, and consumers would not buy non-wool sweaters as a substitute. China was a natural place to turn for the needed goods, largely because the U.S. was not already importing significant quantities from China. The only drawback to this move was the inexperience of the Chinese in dealing with large-scale Western trade. One consequence of this experience was that orders had to be placed, and irrevocable letters of credit supplied, even further in advance then normal for import purchases.

Retailers, accordingly, sought to assure themselves that the Chinese would be able to supply the sweaters when they were finally ready for shipment to the U.S. One question was whether the U.S. would demand that a quota be placed on sweater imports. When wool sweaters were not included on the list of items for which quotas were negotiated in 1979-80 as part of an overall U.S.-China textile/apparel trade agreement, retailers naturally assumed that quotas would not be a problem. Orders were placed and money was laid out for large quantities of wool sweaters.

2. *Imposition of Import Restrictions.*[8]—Within a month after the September 17, 1980, signing of the U.S.-China textile/apparel agreement, however, the situation became a nightmare. On October 18, the U.S. demanded consultations on a wool sweater quota. When the U.S. and China failed to reach agreement on a quota, the U.S. unilaterally restricted China's exports of sweaters to but a fraction of the 1980 shipments.[9] The sweaters which retailers has ordered prior to the request for

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[7] Subsequent negotiations removed the embargo, first for a few hours and later for a few days. The embargo is now in place and will prevent the entry this year of many thousands of shirts. Plans for next year have also been disrupted considerably.

[8] A more detailed chronology of the events in the U.S.-China wool sweater dispute is attached as Appendix A to this statement.

[9] The agreement provides that in the event of a request for consultations, and a subsequent failure to agree on a quota within 90 days, limits on exports from China are to be set automatically at the level of imports for the first 12 of the last 14 months for which import data is available. At the time of the call, the U.S. had import data through August 1980, which meant that the limits would be—and later were—set using import levels through June, or about 113,000-dozen. From July through December 1980, approximately 400,000-dozen more sweaters arrived from China.

consultations quickly filled this quota, and the U.S. imposed an embargo on February 9, 1981. Most of the sweaters ordered in the summer and early fall of 1980, in advance of the request for consultations, had not arrived by that time, and many retailers suffered substantial losses because they could not get their goods.

Finally, in the face of a U.S. Court of International Trade decision holding that the embargo was in violation of various aspects of the U.S.-China textile agreement,[10] the U.S. completed an agreement with China on quotas for 1981 and 1982. By that time—mid-September—most of the damage for 1981 had been done.

The following sections review the questions surrounding the U.S. actions in this situation and the costs of those actions to American retailers.

3. *Need for Determination of "Market Disruption."*—Paragraph 8(a) of the bilateral textile/apparel agreement between the U.S. and China authorizes the U.S. to request consultations with China for the purposes of establishing a quota on a new category of goods only where the imports in that category are causing, or threatening to cause, "market disruption" in the specific U.S. industry manufacturing comparable goods. The standard for determining when market disruption exists is not defined in the bilateral agreement itself; instead, the agreement refers to the standard of market disruption as defined in the MFA.

As defined in the MFA (Annex A), market disruption exists where there is "serious damage" to domestic producers, or there is a threat of such damage. This standard parallels the "serious injury" standard of the "escape clause," Article XIX of the GATT and of Section 201 of the Trade Act of 1974. The MFA sets forth specific criteria for determining whether market disruption exists which are similar to those used in the escape clause. Among the factors to be considered are: the domestic industry's profits, employment, production, utilization of capacity, and the volume of the alleged disruptive imports and of other imports. Basically, an examination of the health of the U.S. industry is required.

The burden of proof that these factors demonstrate serious damage or injury to domestic industry is borne by the United States, specifically CITA. The bilateral textile agreement requires CITA to submit a "detailed factual statement" in support of its finding that market disruption exists.

4. *No Disruption Due to Wool Sweaters from China.*—The "detailed factual statement" submitted by CITA in October 1980 to support its call on wool sweaters from China was devoid of the information necessary to support the required findings of (1) market disruption in the U.S. sweater industry and (2) that imports from China were a cause of disruption. The CITA statement contained no evidence at all about these factors relevant to the current condition of domestic wool sweater producers. Instead, the statement cited data on the industry's performance from 1970 to 1979, a period of significant decline in the retail market for wool sweaters, and prior to the importation of any significant quantity of wool sweaters from China.

However, as the statement admitted, there was a 26 percent increase in the domestic shipment of all sweaters between the first seven months of 1979 and a comparable period in 1980. This resurgence of domestic sweater production was a result of the resurgence of consumer demand for wool sweaters. Our retail experience[11] indicates that the renewed demand for wool sweaters is a result of consumers' desire for, and belief that they are getting, warmer sweaters and more value for thier dollars.

Far from being an industry threatened with disruption, the U.S. wool sweater manufacturers, according to all available indications, were enjoying a boom period at the time CITA issued its call on sweates from China. First, the statements of domestic producers and retailers indicate that the domestic industry was producing wool sweaters at the peak of their capacity, yet were still unable to meet demand.[12] For example, the Woolrich Company—itself a manufacturer of woolen apparel—was forced to import wool sweaters because of the lack of resources in the U.S. for wool sweater production.[13] Similarly, the J.C. Penney Company found that full fashion women's sweaters—the primary type of sweater that China exports to the U.S.—were generally not available from domestic suppliers, and so was forced to buy from abroad.[14]

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[10] *ADG* v. *U.S.*

[11] See also letter from National Knitwear and Sportswear Association to CITA, March 13, 1981, admitting that demand for fullfashioned sweaters had been good.

[12] See letter from Alan Chien, BACUS Group of Ameica, to CITA, February 4, 1981.

[13] Letter from Roswell Brayton, President of Woolrich, to CITA, February 20, 1981.

[14] Letter from Robert Boulogne, Manager of International Buying, J.C. Penney Co., to CITA, December 12, 1980.

In addition to the statement of retailers and producers, a 1980 study by a respected textile and apparel consulting firm—Kurt Salmon Associates—revealed that manufacturing capacity for women's and girls' sweaters remained constant and has not been modernized over the last decade. This lack of capacity means that, while U.S. producers can (and do) fill a niche in the market, both manufacturers and retailers have been forced to look to foreign sources to meet increased demand for fullfashioned wool sweaters. Moreover, the study concluded that this lack of capacity is long-term, if not irreversible, because obtaining the skilled workers and new technology necessary for such sweater production is beyond the investment capacities of most U.S. firms. In short, the study demonstrates that the increased demand for wool sweaters could not possibly have been met by U.S. production and that the limits on wool sweater imports are not likely to be effective in aiding the U.S. industry.

The Salmon study highlights another flaw in the reasoning behind CITA's finding of market disruption. In its statement, CITA ignored evidence that the wool sweaters imported from China would not be directly competitive with most domestically produced sweaters because they are of a different type. The great bulk of the sweaters imported from China are 100 percent wool, "shetland" style, "fullfashion" women's sweaters. "Fullfashion" sweaters are those produced on flat hand looms; they have "set in" rather than "sewn in" arms, and are more finely fitted and shaped than other machine-made sweaters. U.S. manufacturers were not able to produce comparable sweaters in the volume necessary to meet consumer demand in 1980 (and predicted demand in 1981) because the requisite skilled labor needed for the hand "looping and linking" of the sleeves, shoulders, and necklines on fullfashioned sweaters is not available in the U.S., nor does this country have much capacity in automatic flat machines capable of producing fullfashion sweaters. In other segments of the sweater market, such as men's and boys' sweaters and acrylic sweaters, our retail experience indicates that U.S. producers control a significant portion of the market. Again, this study illustrates the shallowness of CITA's review of the wool sweater market.

The picture of the U.S. sweater industry that CITA painted in its statement is focused primarily on the growth of overall imports during the 1970's. This gradual increase in imports over ten years (1970–79), from 7,553 thousand-dozen to 10,045 thousand-dozen, is not the "sudden flood" of imports that CITA claimed. Further, higher import levels do not equal market disruption, per se. In the context of the renewed growth in production of the domestic sweater industry between 1979 and 1980 (26 percent), and the increased level of employment (both in production workers and total workers) in the domestic sweater industry between 1979 and 1980, CITA's October 1980 claims of market disruption simply do not make sense.

The only evidence of a downturn in the industry that CITA could point to was a decrease in domestic production of acrylic and wool yarn of 38 and 24 percent, respectively, in August relative to July 1980. On this single statistic, CITA predicted a likely decline in domestic sweater production. Given the many signs described above of the resurgence of both consumer demand and the domestic wool sweater industry, one month's decline in yarn production can not be equated with disruption in the (separate) sweater industry.

Finally, CITA's findings made no specific link between wool sweaters from China and the purported market disruption. Again, before the U.S. may seek or impose quotas, the U.S. is required to find that the imports to be restricted are causing or threatening to cause market disruption. CITA's analysis was critically lacking in this regard; even if CITA had carefully reviewed the impact of China's imports (as distinguished from other sources of supply), there was no basis for finding market disruption caused by the sweaters from China.

5. *The Growth of China's Exports in Context.*—The rise in China's exports to the U.S. from 1979 to 1980 can only be understood in the context of China's unique situation as a new trading partner of the U.S. Until 1980, when the U.S. granted China "most favored nation" treatment, U.S. imports of China's sweaters were artifically low in relation to China's production capacity.[15] In 1979, the U.S. received only 17.2 thousand-dozen wool sweaters from China, which made China the eighth largest supplier of wool sweaters to the U.S.[16] In 1980, with the granting to China of a "favored" trading status, imports rose to 201 thousand-dozen in the first 8 months of the year. This level of imports placed China in a distant second position to Hong Kong (1,441.9 thousand-dozen), and just barely ahead of Taiwan (200.6 thousand-

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[15] Until the mid-1970's, U.S. imports of Chinese wool sweaters were nonexistent.

[16] By way of comparison, Hong Kong, the leading supplier, exported 1,094 thousand-dozen sweaters to the U.S. in 1979.

dozen). Even with its sevenfold increase from 1979 to 1980, China's share of total 1980 U.S. imports was still only 11.8 percent as compared to Hong Kong's 58.1 percent. Moreover, China's share of the overall growth of wool sweater imports from the January to August period of 979 to the same period in 1980 was only 25 percent as compared to Hong Kong's 49 percent share. Hong Kong's increase in exports from 1979 to 1980 was 348 thousand-dozen—one and a half times China's total exports for the year. These statistics make it difficult to understand how CITA could find that China's exports were a major factor in the overall rise in sweater imports based on the available data in October 1980. It is impossible, given the resurgence of domestic wool sweater production in 1980, and China's small share of total imports, to understand how CITA could find China's sweaters to be a source of market disruption to the U.S. industry. Even later, when the level of imports from China had increased markedly, the demand for the sweaters was strong enough to absorb the volume with no harm to U.S. producers.

6. *Costs of the dispute.*—The costs to retailers that resulted from the embargo on Chinese wool sweaters were immense. These costs included storage of the embargoes sweaters on the docks, bonding of the goods that were stored, loss of income in sales, interest payments on loans made to purchase the embargoed sweaters, damage to sales of related apparel resulting from failure to stock wool sweaters, loss of reputation, destruction of the market demand for wool sweaters, damage to the sweaters themselves while in storage, destruction of retailers' marketing plans, and the need to purchase substitute merchandise (not always available and often at higher cost).

Some of these costs are quantifiable, while others—such as the damage to a retailer's overall business due to failure to stock a certain item of apparel—are impossible to measure.

Associated Dry Goods, as part of its legal challenge to the embargo, estimated that if the embargo had not been lifted in 1981, its losses would have been three quarters of a million dollars in quantifiable damages, as well as other large intangible losses. One of ADG's divisions, Hahne's Department Stores, found that one week's delay in processing its merchandise caused a reduction in profits of 4.5 percent of the retail value of the items.

ADG had planned an entire merchandising campaign for fall 1981 based around the women's fullfashion shetland all-wool sweaters it had ordered from China. This campaign was designed to promote sales of all types of apparel, using the colors highlighted by the sweaters as an overall theme. The sales generated by this promotion would have benefitted numerous American apparel manufacturers of coordinate items whose sales would be enhanced by the overall program. In order to put this plan in action, ADG needed to know in April whether the sweaters would be available. As it was, the whole program had to be revamped, and the sweaters became an immediate sale table item when they finally reached the stores in October.

CONCLUSION

Retailers and our customers, the American consumer, have borne a major burden as the U.S. government has moved to "protect" other U.S. industries from legitimate competition from imported products. The administration of this protectionist regime has, unnecessarily, only added to this burden. We believe that this should be corrected, through a Cabinet-level review of the program and through establishment of improved information and due process for all concerned.

APPENDIX A.—CHRONOLOGY OF THE DEVELOPMENT OF IMPORT RESTRICTIONS ON WOOL SWEATERS FROM CHINA

1973: U.S.-China trade relations resumed.

1976: U.S. imports from China of textile and apparel products totalled 153 million square yards equivalent ("SYE"), largely of cotton fabrics.

1977: U.S. textile/apparel imports from China totalled 88 million SYE, still largely in cotton fabrics.

July 24, 1978: First trade press article (Daily News Record) discussing likelihood that U.S. would seek limits on textile/apparel imports from China.

Sept. 16, 1978: Daily News Record reported unofficial U.S.-China negotiations on limits on textile/apparel imports.

Nov. 20, 1978: Daily News Record reported that a number of U.S. apparel manufacturers had entered into joint ventures with Chinese producers on a wide range of products, including wool sweaters. The U.S. companies supplied the equipment for producing the items.

Jan. 4, 1979: Federal Register notice of U.S.-China discussions on limiting textile/apparel imports from China. Talks to begin Jan. 22, 1979. Comments solicited from the public, to be submitted no later than Jan. 18, 1979.

Jan.-May 1979: Several discussions held between representatives of the U.S. and Chinese governments on limits on textile/apparel imports from China.

June 6, 1979: Federal Register notice of unilateral U.S. imposition of quotas on 7 categories of textile and apparel products. Wool sweaters were not included.

Aug. 1979: Trade press reported likelihood that several (or all) of the quotas would fill prior to May 30, 1980.

Sept. 1979: Quota for one category filled and embargo announced. China stated its general policy that orders would not be cancelled, but rather that goods would be shipped notwithstanding the embargo.

Oct. 23, 1979: U.S.-China Agreement on Trade Relations submitted to Congress for approval.

Oct. 31, 1979: Federal Register notice of unilateral U.S. imposition of quotas on 2 additional categories of textile/apparel products.

April 24, 1980: First trade press article noting rise in wool sweater imports.

April 25, 1980: Daily News Record article discussing resumption of U.S.-China discussions on textile/apparel trade agreement. Listing of new categories to be included in the discussions did not include wool sweaters.

May 1980: U.S. announced reimposition of unilateral quotas. Embargo of cotton shirts was so large that the quota filled just from embargoed products.

July 25, 1980: Press reported that the U.S. and China had agreed "in principle" to a textile/apparel trade agreement. Wool sweaters not among products to be put under quota.

Sept. 17, 1980: U.S. and China signed several trade agreements, including the textile/apparel agreement.

Oct. 10, 1980: Daily News Record reported U.S. industry protests of imports in categories not under quota, including wool sweaters.

Oct. 18, 1980: U.S. requested consultations with China on wool sweater imports, claiming market disruption (or threat) from imports.

Oct. 27, 1980: Federal Register notice of request for consultations. This notice contained no discussion of restraint levels, either during the 90-day consultation period or in the event that no agreement was reached.

Jan. 16. 1981: U.S. announced a 15-month restraint level for wool sweaters exported from China after Oct. 19, 1980 through Jan. 16, 1982.

Jan. 19, 1981: Federal Register notice of the restraint level.

Feb. 9, 1981: The 15-month restraint level for wool sweaters filled at 9:38 a.m.

April 13, 1981: Associated Dry Goods filed suit in U.S. Court of International Trade challenging the embargo of wool sweaters.

Aug. 3, 1981: U.S. Court of International Trade ruled that the U.S. had improperly imposed the embargo, ordered the release of ADG's sweaters, and remanded the matter to the Committee for the Implementation of Textile Agreements for further consideration on the issue of whether the request for consultations was justified on the basis of "market disruption" in the U.S. industry manufacturing comparable wool sweaters.

Aug. 14, 1981: U.S. filed appeal of the C.I.T.'s decision in the Court of Customs and Patent Appeals. Shortly thereafter, the CCPA stayed the lower court's order to release ADG's sweaters.

Sept. 20, 1981: U.S. and China reached agreement on quotas for wool sweaters, allowing entry of 250,000-dozen in 1981 and 1 percent growth in that quota for 1982 and 1983. All embargoed sweaters were entered as a result of the lifting of the embargo.

APPENDIX B

ASSOCIATED DRY GOODS CORPORATION, Plaintiff,

v.

The UNITED STATES, et al., Defendants.

Court No. 81-4-00375.

United States Court of International Trade.

Aug. 3, 1981.

Plaintiff, an importer of wool sweaters from China, contested exclusion of its merchandise from entry by Customs Service pursuant to quota established for merchandise by the Committee for the Implementation of Textile Agreements. The Court of International Trade, Rao, J., held that: (1) complaint which alleged that wool sweaters sought to be imported from China were wrongfully denied entry because the Committee on Implementation of Textile Agreements miscalculated the restraint level and because it erred in concluding that certain importations were causing market disruption or threatening market disruption stated claim upon which relief could be granted, and (2) the court could exercise jurisdiction over the controversy despite claim that matter involved foreign policy considerations and conduct of foreign affairs.

Defendant's motion to dismiss denied.

1. Customs Duties ⇐84

The Court of International Trade had preliminary jurisdiction over an action in which the plaintiff alleged that certain wool sweaters sought to be imported from China were wrongfully denied entry because the Committee on the Implementation of Textile Agreements miscalculated the restraint level and because it erred in concluding that certain importations were causing market disruption or threatening market disruption. 28 U.S.C.A. § 1581(a), (i)(3, 4).

2. Customs Duties ⇐84

A complaint which alleged that certain wool sweaters sought to be imported from China were wrongfully denied entry because the Committee on the Implementation of Textile Agreements miscalculated the restraint level and because it erred in concluding that certain importations were causing market disruption or threatening market disruption stated a claim upon which relief could be granted despite a claim that the matter involved foreign policy considerations and the conduct of foreign affairs. 28 U.S.C.A. § 1581(a), (i)(3, 4).

3. Customs Duties ⇐22

In action in which it was alleged that certain wool sweaters sought to be imported from China were wrongfully denied entry, finding of threat of market disruption was not supported by sufficient data in light of fact that similar goods had not been compared. 28 U.S.C.A. § 1581(a), (i)(3, 4).

4. Customs Duties ⇐84

The Court of International Trade has jurisdiction to review agency action which impacts on imports.

Rode & Qualey, New York City (Michael S. O'Rourke and Patrick D. Gill, New York City, on the briefs) for plaintiff.

Stuart E. Schiffer, Acting Asst. Atty. Gen., Washington, D.C., David M. Cohen, Branch Director, Commercial Litigation Branch, New York City (Velta A. Melnbrencis, New York City, on the briefs); Pamela Breed, Deputy Asst. Gen. Counsel, Enforcement and Litigation, Dept. of Commerce, Washington, D.C., for defendants.

Daniels, Houlihan Palmeter, P.C. (Michael P. Daniels and Martin J. Lewin, Washington, D.C., on the briefs), for American Importers' Ass'n, Textile and Apparel Group, amicus curiae.

RAO, Judge:

Plaintiff, an importer of 100% Shetland wool full-fashioned ladies sweaters from the People's Republic of China (hereinafter PRC), contests the exclusion of its merchandise from entry by the Customs Service pursuant to a quota established for the merchandise by the Committee for the Implementation of Textile Agreements (hereinafter CITA). The case is before this court on defendants' motion to dismiss for failure to state a claim upon which relief can be granted and plaintiff's opposition thereto.[1] The American Importers Association, Textile and Apparel Group (hereinafter AIA-

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[1] Previously, The Chief Judge of this court had denied plaintiff's motion for a preliminary injunction. See 515 F.Supp. 775 (1981).

TAG) appears as *amicus curiae*, participating through the filing of briefs and in oral argument. A verified complaint has been served and filed, which defendants have answered.

This case arises under an Agreement Relating to Trade in Cotton, Wool, and Man-made Fiber Textiles and Textile Products between the United States and the PRC (hereinafter the Agreement) on September 17, 1980. Although this agreement specified quantitative limits for some categories of textile products to be exported from the PRC to the United States, the category into which the instant merchandise falls (category 446) is unlimited. See Annexes A and B to the Agreement.

Under Paragraph 8 of the Agreement the United States reserved the right to request consultations with the PRC if it believed that imports in any category or categories not covered by specific limits were, due to market disruption, threatening to impede the orderly development of trade between the two countries.[2]

On October 18, 1980 the United States requested consultations with the PRC with regard to category 445/446 merchandise. A notice of the request was published in the Federal Register on October 27, 1980 (45 Fed.Reg. 70960). These consultations did not result in agreement, and the United States proceeded to establish import restraint levels. CITA, which was empowered by Executive Order 11651 of March 3, 1972, as later amended, to supervise the implementation of all textile trade agreements, established an import restraint level of 183,706 dozen sweaters.[3]

On January 19, 1981 CITA published a notice in the Federal Register (46 Fed.Reg. 5033–4) directing the Commissioner of Customs to prohibit, effective January 19, 1981, for the period from October 19, 1980 through January 16, 1982, entry into the United States for consumption of wool sweaters in categories 445/446 produced or manufactured in the PRC and exported on or after October 19, 1980, in excess of 183,706 dozen.

Plaintiff alleges and defendants admit that this quota was filled on February 9, 1981. Imports from the PRC of category 445/446 sweaters have been refused entry into the United States since that date.

The commercial invoices indicate that on September 25, 1980, 8 days after the Agreement was entered into by the PRC and the United States, plaintiff ordered approximately 1815 dozen sweaters, described as ladies 100% Shetland wool, 5 gauge, from various manufacturers in the PRC, and on October 15, 1980 it ordered an additional 1000 dozen. This merchandise was exported on January 18, 1981[4] and on January 24, 1981.[5] Plaintiff attempted to enter the merchandise subsequent to February 9, 1981, the date on which the quota was filled, but the Customs Service refused to permit the importations to enter. The merchandise was, and continues to be, stored in a bonded warehouse. Plaintiff subsequently filed timely protests (Nos. 1001-1-002938, 1001-1-002939, 1001-1-002940 and 1001-1-002941), protesting Customs' refusal to release, and the exclusion of, the merchandise into the United States. These protests were denied by the Customs Service and this civil action timely followed. Protest No. 1001-1-003596 is hereby dismissed as untimely as it was not denied until after April 13, 1981, the date on which summons 81-4-00375 was filed.

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[2] The full text of Paragraph 8, which delineates the consultation procedure and the remedies available if no agreement is reached is, because of its relevance to points discussed *infra*, set out in its entirety here:

> 8. (a) In the event that the Government of the United States believes that imports from the People's Republic of China classified in any category or categories not covered by Specific Limits are, due to market disruption, threatening to impede the orderly development of trade between the two countries, the Government of the United States may request consultations with the Government of the People's Republic of China with a view to avoiding such market disruption. The Government of the United States of America shall provide the Government of the People's Republic of China at the time of the request with a detailed factual statement of the reasons and justification for its request for consultation, with current data, which in the view of the Government of the United States of America shows
>
> 1) the existence or threat of market disruption, and
>
> 2) the contribution of exports from the People's Republic of China to that disruption.
>
> (b) The Government of the People's Republic of China agrees to consult with the Government of the United States within 30 days of receipt of a request for consultations. Both sides agree to make every effort to reach agreement on a mutually satisfactory resolution of the issue within 90 days of the receipt of the request, unless this period is extended by mutual agreement.
>
> (c) During the 90 day period, the Government of the People's Republic of China agrees to hold its exports to the United States of America in the category or categories subject to this consultation to a level no greater than 35 percent of the amount entered in the latest twelve month period for which data are available.
>
> (d) If no mutually satisfactory solution is reached during these consultations, the People's Republic of China will limit its exports in the category or categories under this consultation for the succeeding twelve months to a level of 20 percent for man-made fiber and cotton product categories (and of 6 percent for wool product categories) above the level of imports entered during the first twelve of the most recent fourteen months preceding the date of the request for consultations.

[3] According to the pleadings and briefs, this figure was arrived at by combining the restraint level for the 90-day consultation period and the succeeding 12-month period, based on the formulae contained in the Agreement, Paragraph 8(c) and 8(d).

[4] Entries 81831758–7, 81831764–2, and 81831765–5.

[5] Entry 81831759–0 and 8183175–4.

It is plaintiff's position that its merchandise was wrongfully denied entry because CITA miscalculated the restraint level (quota) at 183,706 dozen sweaters and because CITA erred in concluding that importations of categories 445/446 merchandise from the PRC, between the period of time between September 17, 1980 and October 18, 1980 were causing market disruption, or threat of market disruption, based on the data then available to it with reference both to imports and to domestic production.

Defendants, through their motion to dismiss, bring into question this court's jurisdiction over this controversy, specifically denying that plaintiff has stated a claim as to which relief may be granted. Additionally, defendants contend that this court lacks jurisdiction in this matter because it involves foreign policy considerations and the conduct of foreign affairs. The court disagrees with both contentions.

I

[1] The Customs Courts Act of 1980, Pub.L. 96-417, October 10, 1980, 94 Stat. 1727, not only restated the preexisting jurisdiction of this court, but also specifically provided that "the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for * * * embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety." 28 U.S.C. § 1581(i)(3).

This court has previously considered the scope of this provision with respect to quotas in *Wear Me Apparel Corp. v. United States, et al.*, 1 CIT ——, 511 F.Supp. 814 (1981), wherein it said:

> However, section 1581(a) is not the only jurisdictional provision applicable here. * * *
>
> * * * * * *
>
> Section 1581(i), as explained by the House Committee on the Judiciary (H.R. Rept. No. 96-1235, supra at 47), provides a broad "residual grant of jurisdictional authority * * * to eliminate the confusion which currently exists as to the demarcation between the jurisdiction of the district courts and the Court of International Trade * * * [and] makes it clear that all suits of the type specified are properly commenced only in the Court of International Trade."
>
> Given the fact that the claims as to which a protest has been filed directly concern an import quota, these claims obviously arise "out of * * * [a] law * * * providing for * * * quantitative restrictions on the importation of merchandise." In that circumstance, section 1581(i)(3) specifically grants this court jurisdiction to entertain these claims.
>
> Moreover, since these claims involve the administration and enforcement of quantitative restrictions, section 1581(i)(4) also provides jurisdiction. [15 Cust.Bull. No. 14 at pp. 30-1.]

Defendants have conceded that this court has jurisdiction pursuant to 28 U.S.C. § 1581(a), but only to the extent that this court could determine whether the Customs Service rightfully carried out the instructions of CITA in administering the quota. We conclude that this court has plenary jurisdiction to review the entire matter pursuant to section 1581(i)(3) and (4).

[2] Defendants also address the issue as to whether plaintiff has stated a claim. The verified complaint alleges that plaintiff is the importer of record, that its merchandise was denied entry due to agency action

resulting in restraints on the number of sweaters that can be imported from the PRC, that it has been injured by this agency action in that it is losing sales on this merchandise and related sales on other merchandise, that the agency action was based in incorrect or incomplete data, and plaintiff prayed for specific and general relief. Considering the fact that the Customs Courts Act of 1980 was enacted in part to provide relief for importers aggrieved by agency action in one forum, this court concludes that plaintiff's complaint sufficiently states a cause of action.

Defendants also contend that plaintiff is attempting to interfere with the proper function of the Executive in foreign policy matters, and that the United States will be hindered in its further negotiations with the PRC relative to the Agreement and other matters if plaintiff is given the relief it seeks. However, plaintiff's sweaters have already been exported from the PRC and the irrevocable letters of credit have already accrued to the benefit of the PRC manufacturers. The impact of permitting or denying entry to plaintiff's merchandise will be felt by it alone and will have little or no bearing on further negotiations, either to expand or restrict the number of sweaters in categories 445/446 permitted entry into this country.

This court recognizes that actions of the President with respect to the negotiation, and the signing of treaties and foreign trade agreements are beyond its review. *Cf. William A. Foster & Co. (Inc.), et al. v. United States*, 20 CCPA 15, T.D. 45678 (1932), and generally, Sturm, *Customs Law and Administration*, § 60.2. However, it can be hardly concluded that CITA rises to the power and authority conferred on the President by the Constitution and by Congress. Absent a clear mandate from Congress that CITA's actions are to be vested with the mantle of Presidential immunity from judicial review, this court concludes that Congress did not intend to extend the President's protective shield to cover CITA's actions.

Additionally, CITA's actions in determining that consultations with the PRC were necessary with respect to categories 445/446 were more administrative than foreign policymaking. To arrive at a belief that there was market disruption or the threat of market disruption, CITA had to evaluate import data and the state of the domestic industry. If those actions or determinations were not based on sufficient data or if incorrect conclusions were drawn from such data and plaintiff was injured as a result, review of CITA's determinations by this court is proper.

II

Pursuant to section 8(a) of the Agreement, a condition precedent to a request for consultations by the Government of the United States with the Government of the PRC is a belief that imports from the PRC are threatening to impede the orderly development of trade between the two countries due to market disruption.[6] The term "market disruption" is not defined in the Agreement, but the parties have agreed that the definition of the term provided in Paragraphs I and II of Annex A of the Arrangement Regarding International Trade in Textiles commonly known as the Multifiber Agreement (hereinafter MFA), 39 Fed.Reg. 13308, 13311 (April 12, 1974), is applicable.[7] Market disruption, according to the MFA, must be based on the existance of serious damage to domestic producers or actual threat thereof caused by (1) a sharp and substantial increase or imminent increase of imports of particular products from particular sources and (2) the offering of these products at prices which are substantially below those prevailing for similar goods of comparable quality in the market of the importing country.

The detailed factual statement which the United States was required to provide to the PRC with the request for consultations pursuant to section 8(a) of the Agreement did not establish the second of these factors. Its findings of offerings of "these products" related to all women's wool sweaters, not ornamented, in the middle value range classifiable under TSUS item 382.5871, but there is no indication that the domestic merchandise compared was "similar goods of comparable quality."[8] Indeed, it appears that what was compared was all women's wool sweaters, not ornamented, valued over $5 per pound, produced in the United States. A valid comparison was not made.

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[6] See note 2, supra.

[7] See, particularly, defendants' brief filed April 21, 1981, pp. 37–45.

[3] It therefore becomes unnecessary for this court to decide whether CITA should have considered those factors indicating the existence of damage, such as turnover, market share, profits, export performance, employment, etc., enumerated in Paragraph I of Annex A of the MFA as contended by plaintiff and *amicus curiae* or whether, as contended by defendants, those factors are relevant only to the existence of actual damage rather than the threat of damage. The finding by CITA of threat of market disruption in this case is unsupported by sufficient data.

III

Plaintiff also contends that the formulae utilized to arrive at the restraint level were improperly applied. This court finds that in arriving at a quota of 183,706 dozen sweaters, CITA improperly combined the restraint levels established during the 90-day consultation period pursuant to section 8(c) and that established by section 8(d) of the agreement if the parties could not agree during the consultation period, and impfoperly imposed the restraint level retroactively to October 19, 1980, the date of the receipt of the request for consultation by the PRC.

Section 8(d) of the Agreement provides that if no mutually satisfactory solution is reached during the consultations, the PRC will limit its exports in the category or categories under the consultation *for the succeeding twelve months* to a level of 6 percent for wool product categories above the level of imports entered during the first twelve of the most recent fourteen months preceding the date of the request for consultations. It does not even impliedly permit the combination of this restraint level with that provided for in section 8(c) which is applicable during the 90-day consultation period, nor does it permit retroactive application of the restraint level to the date of receipt of the request for consultations by the PRC.

[4] Defendant argues that plaintiff has no standing to question the terms of a trade agreement with a foreign country and that this court lacks jurisdiction to interpret the terms of trade agreements. The short answer to both these arguments is that plaintiff seeks, not to vary or question the terms of the agreement, but to review the actions of CITA, a government agency with specific delegated authority and duties, in implementing a restraint level on merchandise based on its (CITA's) interpretation of the meaning of the terms of that Agreement.[9] That this court has jurisdiction to review agency action which impacts on imports is well settled.

It is, therefore, the decision of this court that within 90 days CITA shall issue a new determination after a re-evaluation of the data on which it based its findings of threat

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[8] Market Statement to China of October 7, 1980:

* * * The women's wool sweaters imported from China under TSUSA 382.5871 are in the middle value range among the major foreign suppliers but below the U.S. price (see table 5).

Table 5: Import Values and Domestic Price (U.S. $ Per Dozen)

TSUSA No. 382.5871 — Women's wool sweaters, not ornamented, valued over $5 per pound

China	$ 81.65
Taiwan	77.10
Houg Kong	100.45
United States	151.20

NOTE: Import values based on C/F duty-paid values.

[9] CITA comes within the definition of governmental agency as "a subordinate creature of federal, state or local government created to carry out a governmental function or to implement a statute or statutes." *Blacks Law Dictionary*, 1979.

of market disruption. If, on reconsideration of all pertinent data, CITA finds that threat of market disruption, did in fact exist at the time it requested consultations with the PRC under the Agreement, it shall recalculate the restraint level in conformance with the holding in this case and give it prospective application from the end of the consultation period, that is, from January 19, 1981.

Since plaintiff attempted to enter its merchandise for consumption on February 18, 19, 26 and 27, 1981, a period during which the quota would have been open if it had not been applied retroactively, it is further adjudged that plaintiff's merchandise should be released. It is therefore ordered and adjudged that the Customs Service release the plaintiff's merchandise the subject of this claim with the exception of the merchandise the subject of Protest No. 1001-1-003596, which is untimely, from bonded warehouse and permit it to enter the stream of commerce of the United States.

Defendant's motion to dismiss is denied.

Chairman GIBBONS. Tell me about the Korean shirt matter. I am not familiar with it.

Mr. VOYER. Let's start with a country with which the gentleman is not familiar, the least likely place in the world in which to buy shetland sweaters, Mauritius, somewhere off the coast of Madagascar. We had trouble finding them on the map, too, when we heard word that a factory was in operation there.

Chairman GIBBONS. Let's do Mauritius first. Why in the world do they produce sweaters in Mauritius? Is that where the quotas were?

Mr. VOYER. There were no quotas. The factory in Mauritius, at least the first, there may be more, was put up by a Chinese gentleman in Hong Kong who couldn't get quota in Hong Kong, yet knew how to make an excellent sweater.

Chairman GIBBONS. So he invented a new country.

Mr. VOYER. It is a bona fide country, but he invented it as a source for anything remotely like sweaters.

Chairman GIBBONS. I hadn't thought about that new form of foreign aid propogating the quota system.

Mr. VOYER. But it is a form of usury as of foreign aid because as soon as they slap a quota on Mauritius, business is likely to vanish. So Mauritius has its little moment with shetland sweaters, but it is really not an ideal market from which to buy.

We hardly know how to get there. We did send one person, and you go via Tanzania, which is not terribly convenient. Boats do not sail from Mauritius to the United States, as I am told, so all these sweaters have to be shipped by air.

It couldn't be more inconvenient.

Chairman GIBBONS. But he saves $35 to $40 per dozen sweaters?

Mr. VOYER. He doesn't, we do. He can offer it without——

Chairman GIBBONS. The consumer does.

Mr. VOYER. Correct.

Chairman GIBBONS. Plus add on of the tariff.

Mr. VOYER. And regretably, the add on of our markup.

Chairman GIBBONS. Yes. Well, tell me about the Korean shirts. I hadn't heard about the reclassification of Korean shirts. What happened?

Mr. VOYER. Oh, yes. The question was whether they were dress shirts or sports shirts. And, indeed, we are very often either in disagreement or in dispute with U.S. Customs on what something is.

It is just one of the problems of life with quotas. We are continually sending people to U.S. Customs to measure the length of something and determine whether it, in this case, is dress or sport, or fits into some other quota category.

I am reporting this to you without knowing many of the details. I think Mr. Maxwell, I don't want to put him on the spot, but it is possible he knows more details on this matter than I do.

Chairman GIBBONS. Would you like to add something?

Mr. MAXWELL. All I know, Mr. Chairman, is I believe there is a dispute as to the manner in which the shirt is constructed around the hip of the gentleman. Either they are curved, or straight. I don't know if Customs has a particular opinion as to whether the curved or the straight is dress or sport.

I believe the manufacturer had to construct these of a slightly different curve because they were tailored. If a gentleman wasn't very sleek and suave, they carried up on his hip.

Chairman GIBBONS. That is ridiculous, that we would burden ourselves with those kinds of silly arguments. Well, I thank you for all this. I realize that quotas are extremely costly to the American consumer.

They are probably the least wise way we have of solving an economic dilemma of the production of textiles and garments being an industry that every nation in the world thinks they excel in and labor costs having so much to do with the cost of the item.

It seems we would do a lot better if we just put on a reasonable tariff, or if we swapped quotas for tariff rates. As obnoxious as tariffs are, they would at least be something that would help the marketplace work a little better than quotas do.

Quotas are, I think, the least desirable of all the things we have.

Mr. VOYER. Our objection, of course, is not just quotas themselves, but the changing of the rules of the game in the middle of the game, and the seeming failure to understand enough about our business, even though we really have tried to explain it in as many halls as possible. We must project nearly a year ahead for almost all of the ready-to-wear that we buy in the Far East, for example.

At this very moment, the goods that will appear in our next Christmas booklet are being ordered. Some of them have been ordered already at the end of November. Indeed, we placed the production reservations with the factories, which we consider nearly as firm as an order, in September and October.

To change the rules 6 months later is very difficult for us to live with. The fate of the goods has already been decided. A booklet for Christmas, for example, that will go out to 900,000 families from our New York store will be put to bed, as far as we are concerned, in August.

That is, all of the photography will have to be taken, all the goods locked in. This is a booklet we expect people to buy from in December. So we have a very long leadtime that doesn't seem to be recognized always when these instant decisions are made to change the rules.

If I could add one more thing, before we came here, we sat around the table having a sandwich. Someone brought up that you had raised the question with someone from the American Exporters and Importers Association, about how you prefer higher duties to the quota system. None of us had ever really discussed this question, and we found we all agreed with you.

Chairman GIBBONS. Quotas really enrich the holder of the quota. They don't help the consumer in this country, for sure. They really are a way of transferring resources out of this country. I know there already is a tariff, but if we put additional tariffs on and got rid of the quotas, at least the money would end up in the U.S. Treasury, which God knows could probably use it, if what I read is correct.

Let me ask you, why do you go overseas and buy, anyway? As much a harassment as it is, why do you buy overseas?

Mr. Voyer. Well, you realize we buy imports two ways. One, we go through all the harassment personally, traveling, having offices, and so on.

And the other is we pick up a phone and call an importer. So both things are happening. We suspect that they are happening in about equal weight.

It differs for each retail organization, but our import mixture is about 9 percent, our direct import of purchases abroad is about 9 percent of our $2.6 billion in sales.

We only have a guess, without being able to get it as a concrete number, that about the same percentage is bought from importers.

We actually cannot firm up the number because some of the importers are well-known American brand names who just have their goods made offshore. They don't show anywhere in our books that the products are imports.

So for our company—and it might differ for every other company—82 percent of our merchandise is bought here on the domestic market.

So we are not talking about the seven-eighths of the iceberg that is under the water. With imports, we are talking about the tip of the iceberg that is exposed. And we have two major reasons to go abroad to buy anything, whether from an importer or direct import.

The first is because it is perhaps unique, or available only from abroad. The second is really primarily price.

There are goods that cannot be made in this country any longer to sell at a retail price that the customer can afford.

Chairman Gibbons. The complaint was lodged yesterday, and I frankly don't have enough information to dispel it, I think it was the people from the garment workers' union said, well, there is really no difference in the retail cost.

You have a comparable U.S.-made item and an imported item laying side by side. You can't tell the difference in the quality, and the cost is the same as far as the consumer is concerned.

They were alleging that you greedy retailers were just pocketing all that additional money. What would you like to say on behalf of yourselves?

Mr. Voyer. Let me just attack it. There is obviously something wrong in that testimony. It may be based on something they saw somewhere. But as a general rule, it really cannot be, because the next question is, why does the consumer apparently prefer the Korean suit, or whatever it may be that is made in Korea.

It is not a more attractive label than "Made in U.S.A." I believe that every time that someone finds one of these situations, it is a case where the retailer is bringing in a foreign product and pricing it at what its U.S. value would be to establish a level of retail.

I am not suggesting that we do that, but it is certainly done in the industry.

In other words, if a retailer's had it on the floor, in some States for 30 days, in some States for 90 days or 2 weeks or whatever, at $75, and he now promotes it in a booklet or whatever at $50, formerly $75, he needs that exposure on the floor for a period of time at the higher price.

And he's probably tremendously surprised if he sells any at that price.

Chairman **Gibbons**. I am not a very sophisticated clothing buyer, I hate to say. Really, groceries are my specialty. By my waist, you can tell.

I always wondered, there is always a sale going on somewhere in a store. I was always amazed as a child that there could be as many reasons for sales as there were.

Mr. **Voyer**. They might not have been testifying about a man's suit. I just remembered it from a Library of Congress study, there was a men's suit, and it was Korean made.

Knowing what went on in that market, selling suits for $39.95, but first you established that it had a relative value of something higher than that.

Chairman **Gibbons**. One of the practices of the trade. I wasn't aware how that worked. I see it now.

Well, thank you for coming and helping us here.

Mr. **Stevenson**. I just might mention on that one point. We, as an industry, commissioned Brookings Institute to do a study on this subject. This was totally out of our hands as to what they chose and so forth, comparing domestic and imported items.

There was about an 11-percent difference in price that they found over many samplings. And in the lower cost categories, it was up to 13-percent difference in an overall survey.

So it is not that the American consumer is not receiving value for his foreign trade.

Chairman **Gibbons**. How old is that Brookings study?

Mr. **Stevenson**. That was in 1978. And the survey was conducted by the research laboratory of the University of Illinois. They also brought in consumer groups to make sure the items were comparable.

Chairman **Gibbons**. You say the savings of foreign over domestic was how much?

Mr. **Stevenson**. Eleven percent overall, and for lower priced merchandise, 13 percent. And they estimated from those samplings, an American consumer saving of about $2 billion annually.

Chairman **Gibbons**. $2 billion annually?

Mr. **Stevenson**. Yes.

Chairman **Gibbons**. Some fellow in Hong Kong made $2 billion, too, with the quotas. Well, thank you all very much for coming.

Mr. **Maxwell**. Mr. Chairman, if I may, we have been talking a little bit about pricing and quotas. As Mr. Voyer had mentioned, part of the problem, serious problem, of course, a problem for retailers, is how you play the game.

You find sometimes into the middle of the first quarter, the game rules have changed. This makes it difficult. If I may, I think it would be helpful and beneficial to your committee and yourself if you might listen for a moment to an actual case history——

Chairman **Gibbons**. Certainly. I would be happy to. Go right ahead.

Mr. **Maxwell**. It relates particularly to the sweaters from China. This situation might demonstrate to you why the retail industry has found the administration of the import restriction program to be not only costly and frustrating, but also that it imposes on

American industry unnecessary and almost daily burdensome accountings to the Federal Government.

Several years ago, the reopening of trade with China for retailers offered some promise of another source of consumer products, especially labor-intensive apparel items. Acting upon the encouragement of our Government, many retailers traveled to China, or to Hong Kong and other countries, and found great values for the American consumer in the form of high quality apparel.

It was in 1979 and 1980 that the wool sweater market in America turned hot, as we might say. In fact, demand was so great that our American manufacturers couldn't even supply enough wool sweaters to meet the consumers' demand.

What do you do as a retailer? Well, you can turn to China, just one of the few alternative sources of supply. It was a significant untapped source at the time. However, due to the novelty of the Chinese dealing with large-scale Western trade, as Mr. Voyer has said, irrevocable letters of credit had to be supplied many months in advance, even more than usual for foreign purchases.

We placed our orders in good faith and were optimistic about deliveries because the wool sweaters were not included in the list of items just negotiated in the 1979-1980 agreement between China and the United States. I hope you imagine our shock when just about a month later, after the bilateral agreement was signed, our Government demanded consultations with the Chinese for just wool sweaters.

It was just less than a month had passed since our buyers had just returned from that market and placed our substantial orders there.

Quickly, it became apparent to us that, due to the timing of the call, the United States was going to impose an extremely low quota on Chinese sweaters.

That placed us in quite a dilemma. Not only were we in danger of losing the orders that we placed with the Chinese—who, incidentally, would not accept a cancellation, they were guaranteed payment under the terms of the letter of credit as long as they complied with it and shipped on time—but we were also severely limited in our ability to purchase replacement goods.

The U.S. manufacturers already were over-producing. Purchases elsewhere in the world were limited by either existing quotas or lack of supply. After the usual 90-day period of negotiations, which didn't produce any type of an agreement between the two countries, the United States, on January 17, unilaterally imposed limits on the Chinese wool sweater exports.

At this time, we were several months into the transactions and there were thousands of dozens of sweaters that were in transit, not only for our company, but for other retailers as well.

Less than a month later, with over 11 months to run, the quota was filled and U.S. Customs embargoed all further shipments until January 16, 1982.

That was now almost a year ago. We were left with our large orders already in transit or still on the shores of China. All these orders, as I mentioned before, were placed in good faith, all prior to the United States exercising the quota mechanism.

What was further distressing was the fact that we had no assurance that in January 1982 we would get all of our sweaters.

If the United States imposed a low quota, and there were orders for excess of that, when the quota period opened in January of 1982, once the limit of the quota allocation expired, all further entries would be prohibited.

If there was an over abundance of sweaters in the warehouses in the United States, they then would have to wait until January 16, 1983.

As our chairman of the board said, you know, this is a heck of a way to run a business. You can't place an order and then just not know when you are going to get it.

So in April 1981, our company, Associated Dry Goods, filed suit against the United States. We argued the embargo was in violation of various provisions of the United States-China textile agreement. We had already planned an entire merchandising campaign for the fall of 1981 very similar to our friends on 34th Street, R. H. Macy's did. We told the court we were going to suffer considerable damages if the sweaters weren't available in our stores for the fall season.

We had already purchased monogram equipment in several divisions. We had the cost of interest on the money already paid. We had the storage of the embargoed sweaters. We had bonding of them under customs supervision. Loss of income in sales and also related items as well.

These shetland sweaters were purchased to fit in with the color and sales scheme of other items in the same department. Also, the risk of the damage to the sweaters themselves.

We had just incurred damage, shrinkage on wool sweaters the year before on purchases made out of Hong Kong where we found, subsequent to receiving them, that the Hong Kong manufacturer had kept these sweaters in storage for 8 months and never told us.

Our estimates, as attested to in our papers in the court, would be the loss of at least three-quarters of a million dollars on this action.

Thank God for American justice. On August 3, the court agreed with us. They ordered the United States to release our sweaters because they felt they had violated the textile agreement. But why the hassle? This is what we don't understand.

I am concerned as just an American businessman, who has a paramount concern in the American consumer, about several aspects of this whole experience.

First, I was surprised that the American Government acted so soon after signing an agreement with our trading partners. The agreement was supposed to settle all of the then existing textile and apparel problems between the United States and China. Our Government didn't even wait for a reasonable time period to see whether or not there were any difficulties, and they exercised their consultation clause.

I am also sincerely puzzled at the characterization of the U.S. wool sweater manufacturing industry as being disrupted by imports. How do you disrupt an industry that had so many orders they can't fill them?

Our buyers carefully surveyed the market and determined that we simply couldn't get these sweaters in the United States. We found that our American producers were selling essentially every sweater they could make. This is part of the record. It is in trade journals and newspapers. Though I am not a lawyer, as a businessman, I can't understand how you can describe that as disrupting an industry.

The third concern I have is the negotiators that represent our Government. They seem very unwilling to accept the fact that their actions were hurting American business, at least as much as they did in the Chinese sweater moves.

I think it would be nice to feel that at least some effort on the part of our Government to accommodate all interests is there. The American sweater maker wasn't hurt. He had all the orders he could handle, but the American retailer that couldn't buy any of his sweaters for the American consumer was hurt, just because he brought them in from China.

I don't understand the logic. I hope that I have helped to convey a little bit to you about how heavily the retail industry relies on consistent and predictable action by the Government in conformance with its obligations under the Trade Agreements Act.

When the Government in this case, the wool sweater fiasco I referred to, fails to candidly communicate its intended actions, or if it shifts the ground rules and violates its own agreement, it is the retail industry and, ultimately, the American consumer that suffers.

We think this is wrong, and we would like to see something done about it. Thank you.

Chairman GIBBONS. I am glad you made that statement. I had some vague recollection about there being a Chinese wool sweater case, but I have never heard the details of it. I am sorry to hear the details of it because I think, from what you tell me, it is atrocious.

Is that case final?

Mr. MAXWELL. Yes, sir.

Chairman GIBBONS. Did the Government appeal it or anything?

Mr. MAXWELL. The Government did appeal it. As it went into the appeals court, we were just into the appeal motion, I believe, about 2 weeks or so, when the United States and China came to an agreement on quota allocation, and decided on 250,000 dozen sweaters. Release of the sweaters at that time mooted the appeal, but the case is still simmering in the Court of International Trade now.

Chairman GIBBONS. It seems ridiculous that after you have already put up your letters of credit, based upon the understanding that wool sweaters were not under the quota, that they would come and slap an ex post facto quota on you. I am sorry to hear our Government functions like that.

Do we function in other garment matters like that?

Mr. MAXWELL. I don't know that we do. I am sure that we do. I think this Korea shirt situation is a parallel kind of a problem. The right hand doesn't let the left hand know what it is doing. This is wrong, and we found no sympathy. We talked to our Government officials numerous hours before even taking suit. I sympathize with our colleagues in the steel industry listening to them earlier. We do have American justice here. File a countervailing duty suit or a dumping suit. We did it. We are pleased. It cost us money. We were very aggravated, but we are very pleased with the outcome of it, but we would like to see an improvement on the rules.

Chairman GIBBONS. This is an atrocious way to treat an American businessman, really. As I say, I have heard your side of the case, I haven't heard their side, but I have no reason to believe you are not telling the truth. It is an atrocious way to treat an American businessman.

Mr. VOYER. They didn't single out Dick Maxwell in ADG. They did it to the whole industry. We had $600,000 worth of Chinese sweaters sitting in the warehouses for months and months and we were picturing mold and rats getting at them. They are out now, thanks partially to ADG.

Chairman GIBBONS. Were these men's or women's sweaters?

Mr. VOYER. Yes, ladies'.

Chairman GIBBONS. That is no way to treat any American business. Quotas are horrible enough. They are perhaps the most clumsy tool we use next to total embargo, but to jimmy them around like this is inexcusable. I am going to ask the staff to ask those people to come and explain their side of the case to us, before we complete these oversight hearings.

Mr. MAXWELL. I will be very happy to. I have this much testimony in my office [indicating].

Chairman GIBBONS. I want to get them up here to find out what is going on. Who did you talk to in the U.S. Government about this?

Mr. MAXWELL. Messrs. O'Day and Gorell and Murphy.

Chairman GIBBONS. Did you ever have any contact, though, with the U.S. Government yourself directly on this matter?

Mr. MAXWELL. I have not, just in court, sir.

Chairman GIBBONS. You didn't try to negotiate with them?

Mr. MAXWELL. We tried to settle out of court.

Chairman GIBBONS. You tried to settle out of court?

Mr. MAXWELL. Yes, sir.

Chairman GIBBONS. Who did you try to settle out of court with?

Mr. MAXWELL. Mr. O'Day, sir.

Chairman GIBBONS. Mr. O'Day.

Mr. MAXWELL. Yes, CITA, Commerce Department.

Chairman GIBBONS. We will ask him to come up here and talk to us about that. I admit it is no secret that I don't like quotas. I have praised the Multifiber Arrangement as being something better than anything worse I could think of. That is about all. We probably need a multifiber arrangement because we would do something worse if we didn't have it, but it is very expensive. It runs up everybody's costs. What was the name of those islands?

Mr. VOYER. Maritius.

Chairman GIBBONS. Mauritius Islands?

Mr. VOYER. Yes, sir. They are, I believe, an independent nation. They were an English colony conquered by the English during the time of Napoleon from the French. They have had a checkered history. Now it is a Chinese manufacturing base, Hong Kong Chinese.

Chairman GIBBONS. Hong Kong manufacturing base. Well, I guess there are a lot more of those islands left around the world.

Mr. VOYER. Yes. People are talking about the Seychelles and the Andeman Islands. We have found them all on maps now.

Chairman GIBBONS. A geography major would do well in this business of quotas.

Do you have a statement, sir?

Mr. STEVENSON. Yes, I do.

Chairman GIBBONS. I will be glad to hear from you.

Mr. STEVENSON. The National Retail Merchants Association and the American Retail Merchants Association have asked me to give a company perspective on foreign trade matters. My name is Robert Stevenson. I am with the K Mart Corporation, and the majority of our customers are in the $15,000 to $30,090 salary range, and we find that import quotas are especially harmful to our customers. I think one of the problems in import quotas is the fact that the quota costs the same whether it is a $4 item or a $40 item, so that, as you mentioned, it is a very clumsy tool. We find the fact that quotas do increase prices and they limit choices available in the marketplace.

Just to back up a little, about 10 to 11 percent of our merchandise that we sell comes from foreign sources, or at least what we directly import, and we utilize this merchandise to round out and balance our mechandise mix. This also gives an optimal choice of quality and price for our customers.

We operate in 2,000 stores in the United States, and we also do some exporting, and this is a growing part of our business. We sell to retail stores in Australia, Canada, and Japan.

I mentioned previously a study done by William Cline of Brookings Institute, and in that study they showed that for comparable items the domestic items were 11 percent higher in price than the import items, and in the lower price category the difference was 13 percent, and they came to the conclusion that this amounted to annual savings to the American public of about $2 billion a year.

At K Mart Corporation we have done some independent studies. In 1978, the same time as the Brookings study, we studied about 20 items, and we found from our import item compared to a domestic comparable item that there could be as much as a 75-percent difference in the price, so that a substantial saving does accrue to the American public.

It should be noted that general merchandise retailing has about one-half of the inflation rate as the general economy. In 1980 the Consumer Price Index was 13.3 percent and in the general merchandise sector was 7.7 percent, and we feel that a part of this cost containment performance is due to lower priced import merchandise within our assortments.

I would like to comment on three current trade matters that are up before the Government at the present time. The first one deals with MFA textile and apparel imports. The second one involves clothespins and the third one involves fishing rods.

In relation to the MFA, I think there we have an example of an exceptional history of trade restriction that has a 25-year history, and that there should be some effort at least to look at the possibilities of reduction or termination of that particular agreement. The impact on our customers is severely felt, and there was a study conducted in 1978 by the Council on Wage and Price Stability that bears this out.

In that study COWPS said apparel tariffs cost the American consumer about $2.7 billion, and that quotas cost $369 million yearly. They went on to say that the jobs that are protected by the MFA are being subsidized at the rate of about $81,000 per job a year.

Chairman GIBBONS. That sounds like a real bargain, $81,000 a year?

Mr. STEVENSON. That is my understanding from this 1978 Council on Wage and Price Stability study. It should be noted—and I think you have throughout the proceedings—that there are policy mechanisms for phaseout in terms of trade adjustment assistance and import relief escape clauses, and those things should be reviewed and used.

In the case of clothespins, they are now subject to import quotas that will expire on February 27, 1982, and currently this is before the administration as to whether to extend these quotas. It should be noted that there is a 25-percent differential between the retail price of domestic clothespins as opposed to imported clothespins, with the imported clothespins being about 25 percent less. It is our hope that the administration will think seriously about terminating these quotas.

In the fishing rod area, this is another one up for the President——

Chairman GIBBONS. Excuse me, how did clothespins get under a quota?

Mr. STEVENSON. I do not know what the origin of it is, but we did testify concerning the proceeding on clothespins that we had over $1 million embargoed in clothespins last year, and it does not seem an area that needs to be protected by quota arrangements.

Chairman GIBBONS. Where do the clothespins come from?

Mr. STEVENSON. The countries? I am not sure. I have a study. I will be happy to supply the committee with the origin of those clothespins.

[The following was subsequently received:]

K MART CORPORATION
INTERNATIONAL HEADQUARTERS
3100 WEST BIG BEAVER RD.
TROY, MICHIGAN 48084

A. Robert Stevenson
Vice President
Government & Public
Relations

RECEIVED
DEC 18 1981
Ways and Means
Subcommittee on Trade

December 16, 1981

The Honorable Sam M. Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, DC 20515

Dear Mr. Gibbons:

It was a pleasure to have appeared before your subcommittee concerning Congressional oversight of American foreign trade policy on December 15.

Responding further to your question, the pending clothespins quotas case involves three-year old quotas which were due to terminate as of February 22, 1982, were it not for the USITC recommendation of extension under Import Relief statutory provisions. The import quotas in the case of clothespins are global, covering every foreign exporting country. The primary export countries involved are as follows: Taiwan, Hong Kong, and some European countries.

The Executive Branch is now or will very soon be considering whether to adopt the USITC's recommendation of extension of these quotas, or to deny extension. We hope that extension of the three-year old quotas will be resoundingly denied by the President.

In the case of imported fishing rods, the USITC recently recommended, in an Import Relief case, that the Executive Branch not impose any quotas or other Import Relief, and we hope the President will follow that recommendation. That case is proceeding on the same general time schedule as the clothespins case, with Presidential determination of remedies to be rendered in the coming weeks, no doubt early in the new year. I have attached copies of some background information on both cases.

Further respecting the hearings colloquy on December 15 concerning evils of the import quotas straightjacket, I have attached a copy of a recent Asian Wall Street Journal editorial which also severely criticizes the import quota device as the worst possible device for foreign trade regulation in a market economy such as America's.

Sincerely,

A. ROBERT STEVENSON

Mr. **Stevenson**. In the case of fishing rods, there are some quotas that are up for renewal currently, and there I think in the best interests of the American public to think seriously about dropping those quotas.

I might also mention to you a special situation concerning footwear this year. As you probably know, the OMA's with Korea and Taiwan were terminated, and our 1982 shoe prices will be about 10 to 15 percent lower than they were in 1981 because of these quota's even though there is about a 14-percent inflation factor in Taiwan. We think that there is substantial savings accruing to the American public when there is freer trade.

In the footwear case, we did a survey in the marketplace and found out that the domestically produced shoes were about 17-1/2 percent higher than the imported shoes of comparable quality and style. This all leads to my last point of the possibility for freer foreign trade.

Retailers are concerned about the impact of foreign trade restrictions on customers, especially our low-end customers. We are opposed to the import quota device. Instead we would probably favor a more cost-effective way of going about it in tariffs, if need be, for particular situations. We realize that trade adjustment policies are necessary, and we should try to limit our activities to adjustment situations as opposed to maintaining things, a permanent situation.

I notice that the Chairman of the Council of Economic Advisers, Murray Weidenbaum, appeared before you, and he made some comments that I thought were very cogent. He stated that we have to realize that forms of trade restraint are, in fact, transfers of income and wealth to an industry and the costs are borne by the American consumer. Mr. Weidenbaum further said that he thought the correct approach was to work on adjustment mechanisms and not preservation of an independent industrial structure.

Further, he mentioned that the general situation should be to help individuals and not industries per se.

Chairman Weidenbaum summarized, in an article that I cited in my written testimony, to the fact that quotas generally impose far higher costs on the U.S. economy than tariffs. They also undermine existing multilateral agreements for a progressive reduction in trade restraints. In all cases of any statutory costs for import relief remedy, modest and economically balanced increases of tariffs are far more preferable than the importation of quotas.

In the case of quotas, they stop all market forces dead in their tracks. Mr. Weisenbaum, in the article that I have cited previously, mentioned that there should be some clear distinctions between the political and proper economic considerations, and that they should be labeled as such:

> However, political considerations and their potential costs in terms of lessening consumer welfare and long-run trends in reduced output, lower employment and higher prices should be identified as such and should not be permitted to masquerade under the clothing of economic welfare.

K Mart and our industry believe that importer relief laws, as shaped under the Tokyo rounds and under resulting agreements, do provide a framework, and that while we don't have any specific comment on trade adjustment assistance, I understand it is under congressional scrutiny at the present time, and should be reviewed as one mechanism for making adjustments.

In summary, I would just like to thank the chairman for his attention, and say that I think it is now time for Congress to move toward the discontinuance of unnecessary governmental trade regulations and toward increasing competition and reindustrialization, and to eliminate inflationary import quota authority and the reduction of unduly high tariffs where they exist, and to broaden consumer choices wherever possible.

We believe this path would be the proper policy direction toward reasonably freer trade, the greater legislative tendency toward more open channels for both imports and exports. Such policies would be for the greater benefit of all Americans, consumers and shareholders. Congress would permit only the most temporary and most economic restrictions for less distortion in free and international trade.

Thank you very much.

[The prepared statement follows:]

Statement of the American Retail Federation and National Retail Merchants Association

Good afternoon, Mr. Chairman, and Subcommittee Members. My name is A. Robert Stevenson. I am Vice President for Government and Public Relations for K mart Corporation headquartered in Troy, Michigan.

Now that Mr. Voyer, of R. H. Macy Company, has outlined some of the merchandising considerations in foreign trade issues, I would like to proceed with our company perspective concerning (A.) consumer impact, (B.) examples of current government decision making, and (C.) the need for freer trade relations.

At K mart, a large percentage of our customers have annual incomes of $15,000 to $30,000. We find import quotas especially harmful to our customers. In fact quotas increase prices and limit choices in merchandise quality, styling, and price.

About 11 percent or 12 percent of K mart's nearly $16 billion of estimated 1981 sales is attributable to our imported merchandise. We utilize imported merchandise to round out and balance our merchandise mix to provide optimal choices in quality and price for our customers.

We have distributed the said merchandise through our more than 2,000 K mart, Kresge, and Jupiter stores located in the continental United States. K mart also exports some merchandise from the USA. Most of these exports are sold through our affiliated retail stores in Australia, Canada, and Japan. Foreign trade benefits both foreign and American customers.

A. HOW CONSUMERS BENEFIT

The only publicly available empirical data on retail price differentials between domestic-sourced and foreign-sourced merchandise is a study written by William R. Cline, Senior Fellow of the Brookings Institution, based on the in-store price data survey conducted in August 1978 by the independent Survey Research Laboratory of the University of Illinois.

The survey found that for analogous merchandise in both imported and domestic versions, retail prices on the imported items were 10.8 percent lower than retail prices on the comparable domestic product. When based on spending patterns of low-income consumers, imported merchandise researched in the survey was priced even lower, at 13.1 percent less than the comparable domestic-made products.

Overall, the survey's conclusion was that in department stores, chain stores, discount stores, and specialty stores, American consumers annually saved a total of more than $2 billion directly in retail purchases of imported general merchandise.

Thus, the availability of imported merchandise means significant savings to American consumers.

There are some additional non-public data, collected at K mart. In early 1978, our Research Department conducted a 20-item retail pricing-shopping survey in eight different department and discount stores and in K mart stores in the Detroit area. Of the twenty analogous imported and domestic-made items surveyed, the domestic items averaged 75.9 percent higher in retail price than the competitive imported products. The survey included 11 hard goods items and 9 wearing apparel items. The regular K mart discount retail price for imported merchandise was compared with the competitive retail-priced domestic items in the competitive stores. Therefore, this small private survey compared only K mart's import retail prices against competitors' retail prices for competing domestic items.

Inflation for general retail merchandise is much lower than the general Consumer Price Index double-digit inflation rates. In fact, the Department Store Inventory Price Index, measuring retail prices, increased by only approximately half the general CPI inflation rate in recent years. In 1980, the annual increase in the CPI was about 13.3 percent, while in the general merchandise price index, the increase was about 7.7 percent. We believe the availability of lower priced imported merchandise is one major contribution to this cost-containment phenomenon.

The empirical data leave no doubt that consumers benefit greatly from the availability of lower-priced imports.

B. CURRENT GOVERNMENT DECISIONMAKING

Several examples of present day decisionmaking in government regarding cost containment cases for consumers are: (1) the ongoing renegotiation talks in Geneva concerning extension of the Multi-Fiber Arrangement ("MFA"), (2) the upcoming Administration remedy determination in the International Trade Commission ("USITC") Clothespins Import Relief quotas extension case, and (3) the upcoming Administration remedy determination in the USITC Fishing Rods Import Relief negative-remedy recommendation case.

(1) *The Multi-Fiber Arrangement ("MFA").*—Other witnesses and statements will cover the MFA in some detail. However, we would raise the MFA here as an example of exceptional historical trade restriction which should now begin a course toward reduction and termination.

The domestic wearing apparel and textile industry in the USA is the most heavily protected American industry in American history. The impact upon our customers, seeking wearing apparel literally to cover the backs of their families, is significant.

A 1978 Council of Wage & Price Stability study calculated that apparel tariffs annually cost the American consumer $2.7 billion, while apparel quotas cost consumers $369 million yearly. Taxpayers and consumers are collectively paying $81,000 a year for each job purportedly protected by the MFA textile and apparel quota system.

Ample statutory machinery exists to allow a phase-out of the MFA as a next major policy priority in effecting freer, more open foreign trade policy for America. The statutory machinery includes Trade Adjustment Assistance and other regulatory accommodations such as Import Relief "escape clause" remedies.

(2) *Clothespins.*—Moving from the all-pervasive quota regulation of wearing apparel imports, we come to the very small item of clothespins. These products are now subject to import quotas that expire February 22, 1982, unless extended by Presidential determination.

It is imperative that the President's foreign trade advisers realize the importance of rejecting current USITC recommendations to extend these quotas. The inflation price differential of domestic-made spring clothespins is fairly dramatic. The average retail price for quoted, imported clothespins is approximately 25 percent less than domestic clothespins at retail. Yet the individual item cost impact on consumers is perceived by some as being relatively small, concealable, and unimportant. Twenty-five percent of every consumer clothespin purchase dollar is significant. K mart hopes the Administration will terminate the quotas which have so seriously restricted clothespin imports for the last three years.

(3) *Fishing Rods.*—Recently, the USITC recommended that the President not impose quotas or other Import Relief in the case of imported fishing rods.

We hope the Administration will stick to its deregulation policy and reject imposition of any import quotas for clothespins as well as fishing rods, much as it decided with respect to footwear import quotas [Taiwan and Korean source] that were allowed to expire on July 1, 1981.

As a result of the lifting of footwear quotas, K mart's retail offerings to customers on previously quotaed shoes will result in a 10 percent to 15 percent retail price savings in 1982 over 1981. Thus, direct tangible consumer price benefits can result from removal of the import quotas economic straitjacket.

During the 1981 USITC Footwear Quotas Extension Investigation Hearings, K mart introduced into evidence the results of its February 1981 Retail Price Survey on Selected Footwear Items. The survey did not include K mart's prices, but was conducted by K mart's Research Department in four types of retail stores in four different American city markets. 568 price point observations were recorded. For a "'market basket" of 27 different shoe styles, the surveyed domestically produced shoes averaged 17.58 percent higher in retail price than the like or directly competitive import models.

C. NEED FOR FREER FOREIGN TRADE

In general, it may be said that retailers are particularly concerned about the impact of foreign trade restriction on our consumers (especially lower-income consumers). Further, retailers oppose the import quotas device. Instead, they favor reasonable trade adjustment policies that avoid undue preservation of uncompetitive industrial structures and attempt to reduce and simplify government regulation of foreign trade.

As Council of Economic Advisers Chairman Murray L. Weidenbaum has said, "we should recognize that any form of trade restraint to help a specific industry really is an internal transfer of income and wealth to that industry from US consumers in the form of higher prices . . . ." [1] Mr. Weidenbaum further describes the correct approach for foreign trade adjustment policies:

"The emphasis in trade adjustment policies should be just that: adjustment, not preservation of an uncompetitive industrial structure. A healthy, dynamic economy is a flexible economy, where businessmen, consumers, and workers have a continuing opportunity to invest their capital, tailor their budgets and find employment in response to market forces unaffected by artificial government barriers or props. Thus, while there may be a role for government assistance to individual workers who have lost employment because of import dislocations, this assistance should be temporary, and oriented toward facilitating their search for new employment in other industries and, conceivably, in other locations. The general rule in such situations should be to help individuals, not industries per se." [2]

As Chairman Weidenbaum summarizes, "In short, for whatever degree of protection may be desired, quotas generally impose far higher costs on the US economy than tariffs. They also undermine existing multilateral agreements for a progressive reduction in trade restraints." [2]

In all cases of any statutory cause for Import Relief remedy, modest and economically balanced increases of tariffs are far preferable to imposition of an import quotas straitjacket. Duties imposed by tariffs can be paid, or not paid if an import is elected not to be made. Quotas, however, stop all market forces cold once the import quota is filled.

Mr. Weidenbaum also clearly distinguishes between political and proper economic considerations:

". . . international and domestic political considerations are frequently necessary elements in the consideration of major trade policy questions. However, political considerations—and their potential costs in terms of lessened consumer welfare, and long-run trends in reduced output, lower employment and higher prices should be identified as such, and should not be permitted to masquerade under the cloak of economic welfare." [2]

While we believe the Import Relief laws are sufficiently shaped through the 1979 Tokyo Round of Multilateral Trade Negotiations and the resultant Trade Agreements Act of 1979, we realize the Trade Adjustment Assistance statutory provisions are now under Congressional policy and budgetary review. While favoring retention of adjustment assistance in principle, we will not comment here on TAA revision.

In summary, now is the time for Congress to move toward discontinuance of unnecessary governmental trade regulation, increased competition and reindustrialization, elimination of inflationary import quotas authority, reduction of unduly high tariffs where they exist, and broadening of consumers' choices wherever possible.

We believe this path will be the proper policy direction, toward reasonably freer trade with greater legislative tendency toward more open channels for imports, and importantly, exports by all types of businesses in the USA. Such policies will be of greatest benefit to all American workers, shareholders, and consumers in all industries. Congress should permit only the most temporary and most economic of restrictions or distortions in free and open international trade.

Chairman GIBBONS. Thank you, Mr. Stevenson. We thank the entire panel for your very fine presentation.

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[1] "Trade Policy and the U.S. Economy," by The Honorable Murray L. Weidenbaum. Tax Foundation's Tax Review, Vol. XLII, No. 7, August 1981, at 27-30.

[2] Ibid., supra.

Mr. Voyer. Thank you for your graciousness.

Chairman Gibbons. We learn something all the time. Mauritius.

Mr. Voyer. It is only a good day when you learn something. Keep your eye on the Seychelles.

Chairman Gibbons. I will look out for them. I love islands. I didn't know they were turning into such valuable things.

Mr. Voyer. Temporarily.

Chairman Gibbons. We have got a lot of them in the Caribbean down there.

Mr. Voyer. That is untapped.

Chairman Gibbons. It is close too.

[The National Retail Merchants Association submitted the following:]

Resolution of the Board of Directors and Statement of the National Retail Merchants Association Concerning the Extension of the Arrangement Regarding International Trade in Textiles (Multifiber Arrangement), January 1981

Whereas worldwide access to supplies of textile and apparel products is of critical importance to the consuming public served by the general merchandise retail industry;

The Arrangement Regarding International Trade in Textiles, also known as the Multifiber Arrangement ("MFA"), which expires December 31, 1981, was designed to be a mechanism for temporary restrictions on trade in textiles and apparel under internationally agreed terms and conditions, as stated in its Preamble "progressively to achieve the reduction of trade barriers and the liberalization of world trade in these products;"

The MFA is an explicit departure from the general terms and conditions for nondiscriminatory international trade, as embodied in the General Agreement on Tariffs and Trade;

Progress towards reduction of trade barriers and expansion of world trade in textile and apparel products can be achieved by extension of the MFA in a form as set forth below;

In connection with the extension negotiations, however, proposals have been offered which are contrary to the express goals of the MFA and to the return to trade consistent with the terms of the GATT;

Expanded trade is valuable to the American consumer and to competition, innovation and efficiency in the American economy, and, as such, is an integral part of our free enterprise economic system;

Resort to restrictions on imports is undesirable, with inflationary and anti-competitive impacts and producing disincentives to forthright adjustment to altered economic realities;

Dislocations due to changing ecomomic conditions in industries adjusting to import competition are best handled through policies and programs that provide direct assistance to the firms, workers, and communities affected;

Be it therefore resolved by the Board of Directors of the National Retail Merchants Association that: the National Retail Merchants Association strongly urges an immediate undertaking of a general review of textile and apparel trade policy at the highest levels of the United States Government, with this review and the development of specific United States MFA negotiating positions to be conducted in a manner which allows meaningful participation by all interested parties, including retail and consumer interests;

The National Retail Merchants Association supports extenstion of the MFA as a temporary arrangement and endorses (1) phasing out the MFA over the next decade, (2) limiting coverage of the MFA to apparel products—continued coverage of textile products is unnecessary since that industry has demonstrated worldwide competiveness, (3) eliminating the "reasonable departures" provision of the 1977 extension protocol, and (4) strengthening the procedures and review functions of the Textile Surveillance Board;

The National Retail Merchants Association opposes efforts to modify the terms of the MFA (1) to provide greater restriction of trade, including proposals to impose limits on the growth of quotas tighter than those presently provided in the MFA, (2) to reduce or elimiate meaningful flexibility of quotas year-to-year and product-to-product, (3) to establish quotas on a global basis, and (4) to discriminate against major supply countries;

The National Retail Merchants Association supports continued and expanded efforts to assist workers, firms, and communities to adjust to changing economic conditions, by bringing their businesses to a competitive state or shifting to other economic endeavors.

Adopted January 14, 1981.

INTRODUCTION

The National Retail Merchants Association ("NRMA") is vitally interested in the issues relevant to the Arrangement Regarding International Trade in Textiles, commonly known as the Multifiber Arrangement ("MFA"), and the extension of that Arrangement. The MFA provides a general framework and guiding prinicples for the negotiation of bilateral agreements between member nations and, in exceptional circumstances, the invocation of unilateral restrictions with respect to trade in textiles and apparel of cotton, wool, and man-made fibers. According to its terms, unless extended, the MFA will expire on December 31, 1981.

By way of background, NRMA is a national, non-profit trade association composed of over 3,500 members who operate more than 35,000 department, chain, and specialty stores in the general merchandise retail industry. Our members have an aggregate annual sales volume of approximately $100 billion and employ over 2.5 million workers. Well over 60 percent of our members' sales are attributable to textile and apparel products.

Our industry has consistently favored expanded world trade as essential to our competitive, free market economy and in the interest of American consumers. We recognize the need for and importance of measures to afford workers, industries and individual companies the opportunity to adjust to new competitive situations. We support the "escape clause" and adjustment assistance provisions of our laws as appropriate mechanisms for providing relief for such workers, industries and companies. We believe that the recent move toward policies promoting broad-based business development through tax incentives, such as the proposed Capital Cost Recovery Act and expanded investment tax credits, and the reduction of regulatory burdens are important steps toward assuring that American industries will be competitive in both the United States and the world. This approach is likely to be far less disruptive of our economy than trade restrictions.

While we favor, as a general proposition, a minimization of restrictions on international commerce, we believe that extension of the MFA covering apparel products but excluding textiles is an appropriate exception which should be continued. There can be no question that the American textile industries have become competitive on a worldwide basis and no longer need the protection of the MFA and the related bilateral agreements. On the other hand, an extension of the MFA applicable to apparel products is critical to the interests of all parties to trade in this area and, ultimately, to trade in all areas. A collapse of the MFA would, in our opinion, almost certainly precipitate chaos in world apparel markets and would spawn a series of unilateral or bilateral restrictions,[1] which would increase the risk of a major international "trade war" extending beyond products covered by the MFA. We urge importing, exporting, and domestic producing interests to recognize the importance of this situation and to work toward an agreement which is acceptable to all.

While extension of the MFA for apparel is vital, we believe that the restrictions sanctioned by the MFA must be explicitly temporary—to extend no more than an additional 10 years. Our support for even temporary and limited MFA extension, however, is inextricably linked to incorporation of a timetable for explicit phase-out of MFA-based trade restrictions. A pre-established phase-out is essential to create the incentives necessary to stimulate industries and companies to adjust to competitive conditions. This type of encouragement for industries and companies is widely recognized as an important component of any effective adjustment approach. Without a fixed timetable for termination of relief, affected industries naturally become dependent upon protection from competition—a condition that, of course, inhibits change and breeds calls for continued trade restriction. The "escape clause," in Section 203(i) of the Trade Act of 1974, recognizes this principle and requires that relief be limited to a set period of time and that it be reduced over the term of the relief.

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[1] Authority for action by the United States is contained in section 204 of th Agricultural Act of 1956, which allows the President to negotiate bilateral agreements limiting exports of textiles or textile products from the agreeing countries to the United States. 7 U.S.C. § 1854. This authority serves as the legal basis for both the multilateral guidelines and the bilateral restrictions negotiated under the MFA, and it has also been used in the absence of a multilateral agreement, serving, in fact, as a precursor to those multilateral arrangements. In the absence of an extension of the MFA, the President could use this authority to negotiate bilateral restraints. More critically, there almost certainly would be an effort to have Congress enact unilateral restrictions, a move that would certainly trigger responses from other countries.

Moreover, the restrictions on trade permitted by the MFA must be coordinated and linked with efforts by domestic industries and their workers and by federal, state and local governments to bring affected companies into global competitiveness or to ease their transition to other economic endeavors.

In sum, we support extension of the MFA framework and the supporting bilateral agreements for apparel products since immediate termination of the restrictions might have a disastrous effect on those domestic companies which have shown signs that short-term protection from import competition will yield long-term benefits through increased competitive ability.

TEXTILE AND APPAREL TRADE

A. *Background*

The modern history of trade in textiles and apparel is best characterized as a sharp and unique departure from the basic prinicples of international trade embodied in the General Agreement on Tariffs and Trade ("GATT"). This departure came about, in large part, because of the formidable political muscle of the developed countries' domestic textile and apparel industries and unions. We have, thus, developed a trade system in these sectors which is wholly at odds with both the letter and the spirit of the GATT. This aberration is detrimental to the continued viability of the GATT, threatens emulation by other sectors, and has short- and long-term adverse effects on inflation, consumers and U.S. export opportunities. Accordingly, the fundamental issue which NRMA believes must now be addressed is how to return trade in the textile and apparel sectors to the mainstream of world trade development in the most efficient way, in the shortest period of time.

The benefits of expanded world trade have been increasingly denied consumers of textile and apparel products as a direct result of the bilateral and unilateral actions allowed by the MFA. Indefinite continuation of this twenty-five-year trend will cost American consumers literally billions of dollars and will strain even further the GATT and its liberalizing approach to trade in all areas.

The validity of these characterizations can be seen from even a cursory review of the history of the MFA and related actions and agreements. By the mid-1950's, Japan had developed into the major challenger to the industrialized countries of Western Europe and North America in the textile and apparel fields, actually reestablishing the position to which that country had risen prior to the war. During the 1960's and 1970's a number of developing countries also established textile and apparel industries. A few of these countries have become strong competitors in a variety of textile and apparel products, but most have built up industries concentrating on a few types of products. The developed countries have "adapted" to this new competition by demanding tighter and tigher restrictions on imports from the developing countries.

The first set of restrictions came in response to pressure from the United States on Japan, which "voluntarily" agreed to limit exports to the U.S. beginning in 1955 and expanded the internal restrictions in a five-year program instituted in 1957.

The political power of the domestic industries became a critical factor during and following the 1960 Presidential election. The result was a program of assistance to the textile industries, including an initiative by the U.S. to limit imports from developing countries. This culminated in the Short Term Agreement in Cotton Textiles, agree to in July 1961, and then the Long Term Arrangement Regarding International Trade in Cotton Textiles ("LTA"), reached in February 1962. The justification advanced for these Arrangements' departures from the GATT was that there was a compelling need to deal with an alleged "market disruption" through a "temporary" multilateral agreement which would secure the rights of developing countries from more harmful actions that individual countries might take in the absence of such an international agreement.

While the "market disruption" concept was at least theoretically and generally compatible with the "escape clause" provisions of the GATT, the level of the restrictions imposed by these agreements was not justified by the relatively minor trade deficits experienced to that time. Further, the "temporary" nature of the LTA was, not suprisingly, no obstacle to its continual renewal throughout the 1960's and into the 1970's.

Negotiation of the MFA itself was preceded by a virtual breakdown in trade relations between the developing and the developed countries in 1970. This near collapse resulted from the highly political treatment given to textile and apparel issues by the Nixon Administration, pushing the United States' demands far beyond any apparent "needs" of our domestic industries. Only a major effort by U.S. exporters, including agricultural interests, and importers prevented Congressional—and, therefore, unilateral—legislation imposing quotas on these products.

Having narrowly escaped harsh unilateral restraints, the developing nations were persuaded first to enter into separate bilateral agreements covering textile and apparel products not subject tc the LTA and then to enter into the negotiations which led to the MFA. U.S. supporters of expanded world trade, as well as elements within the U.S. government, had also been shocked by the real possibility of Congressional action reminiscent of the protectionist legislation of the 1920's and 1930's. Thus, both importing and exporting countries retreated from their most extreme stands, and the initial MFA was both more favorable to the developing countries than the LTA and covered products of wool and man-made fibers, as well as cotton.

The MFA Preamble specifically expresses the signatories' desire "progressively to achieve the reduction of trade barriers and the liberalization of world trade in these products." Moreover, Article I itself expressly states the dual objectives of expanded and progressive liberalization of trade through reduced trade barriers and orderly and equitable development of this trade through measures which avoid disruption in the markets of both importing and exporting countries. The Arrangement allows bilateral and, under certain conditions, unilateral restrictions on trade in textile and apparel products. It contemplates that restrictions will be limited to those instances where an importing country experiences "market disruption" sufficient to justify the restrictions. The Arrangement went into effect on January 1, 1974 and had an initial term of four years.

The recession of 1974-76 was a severe blow to the textile and apparel industries in the developed countries. The European industries where particularly hard hit, partly due to the European Community's ("EC") failure to do much in the way of implementation of the MFA. In the United States, where the MFA had been implemented, the combination of controlled oil prices, a rapid recovery from the recession, and the emerging dominance of world class companies in the man-made fiber industry made the "problems" of import competition considerably less severe.[2] Nevertheless, the U.S. textile industry joined with the U.S. apparel industry and American unions in supporting the demands for much increased protection made by the European countries in the 1977 extension negotiations. Thus, the United States, despite the healthy condition of our textile industry, supported the inclusion in the MFA extension protocal of a provision allowing "reasonable departures" from the Arrangement—a license for the developed countries to ignore the terms of the MFA. While the "reasonable departures" agreement was supposed to alleviated the European problems, the U.S., in response to intense political pressure, has used the spirit of that provision and the disproportionate bargaining power of the American government to obtain much more restrictive bilateral agreements with the major developing countries, even reopening a number which had already been consummated.

Thus, the term of the second MFA has seen an acceleration of the protectionist trends which characterized the 1977 extension negotiations. The European countries have seized upon the "reasonable departures" provision as justification for essentially ignoring the MFA provisions designed to protect the developing countries, to facilitate trade expansion, and to allow a prompt return to trade under GATT principles.

In the United States, the man-made fiber portion of the textile industry has continued its rise to world competitiveness. Textile exports in general, moreover, have tripled since 1970 in quantity terms and quintupled in dollar value.[3] Much of this export growth has been directed at Europe, and has contributed to the difficulties experienced by the European textile industries. Accordingly, pressure for protectionist responses against these American exports has increased. In fact, European industries are agitating for use of MFA-sanctioned unilateral restrictions against U.S. exports. This problem threatens to topple the MFA negotiations, and thus provides another compelling reason why the U.S. negotiating position should advocate exclusion of textiles from the MFA.

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[2] Donald B. Keesing and Martin Wolf, "Textile Quotas Against Developing Countries," London (1980) at 52-55. (Cited hereafter as "Keesing and Wolf").

[3] Production has risen, using the Index of Industrial Production (with 1967=100), from 116.5 in 1971 to 143.8 in 1979, while imports fell over 50 percent from 1972 to 1979. See attached charts for additional information on imports and exports of textile products.

In 1978 and early 1979, the U.S. textile and apparel industries and unions, exercising their potent political power, obtained unprecedented concessions, pushing the Carter Administration to new heights in advocating protectionist policies. They first persuaded Congress to pass a bill containing a provision which would have made impossible any United States tariff concessions on textile and apparel products in the then-concluding Multilateral Trade Negotiations ("MTN"). Because such tariff reductions were crucial to our trading relations with the European Community and to the conlusion of the MTN, the President vetoed this bill, but was forced to agree to an unprecedented program of protection for the textile and apparel industries.

This program is embodied in the notorious February 22, 1979, "White Paper" on textiles and apparel. The paper itself is virtually impossible to understand with any certainty but has been cited by the industries and unions as promising a number of highly restrictive measures in trade policy.[4] Given the ambiguity of this document, the secrecy and conditions of its negotiation, and the change in Administrations, NRMA strongly urges a new start in approaching the 1981 MFA negotiations.

B. Anti-Consumer Impact of Protectionism

The rising cost to consumers of this increasing protection in the textile and apparel sectors has been well documented. A 1978 study by the Council on Wage and Price Stability found that the 29.3 percent average tariff on apparel imports costs American consumers $2.7 billion a year and that quotas on the quantity of goods which 18 foreign countries are permitted to sell to the United States cost consumers $369.4 million a year. Two World Bank analysis put the COWPS figures in perspective:

"Since multi-fiber textile quotas in the United States are, in 1980, eight years old and restrictions on cotton textiles are twenty four years old (eighteen years for those against developing countries), the [COWPS] study implies that the cost to consumers by now would probably be about 10 percent of the value of apparel consumed."[5]

The COWPS study is particularly relevant to the issues at hand in the extension of the MFA. COWPS compared the difference in costs so consumers of apparel quotas which grow at 6 percent per year, as presently required—although not always observed—by the MFA, with such quotas growing at 3 percent per year. Even the 3 percent growth rate is larger than the growth rate proposed by some domestic producers for a new MFA. The findings were as follows:

"On the assumption that quotas are filled every year the costs of quota restrictions are magnified over the years. If, for example, the quota grows at 3 percent each year the total cost to consumers grows from $427.2 million the first year to $1,062.6 million in the fifth year. . . . If the quota grows at 6 percent, the total consumer costs increase from $369.4 million the first year to $790.6 million in the fifth year. Thus, the difference between a 3 percent and 6 percent increase in the quota growth rate by the fifth year is $272 million, as compared to $57.8 million in the first year.

". . . An estimated 890 extra jobs would be lost by continuing the quota growth rate at 6 percent rather than lowering it to 3 percent. In industries where there are job losses due to the higher quota increase, the cost to consumers of protecting each job could be as high as $81,000".[6]

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[4] Although the "White Paper"—officially a document entitled "Administration Textile Program" and dated February 14, 1979—is an ambiguous document, the textile and apparel industries and unions have interpreted it to pledge support for both tight restrictions under the current MFA and far more stringent terms of a new MFA (*e.g.* "globalization" and very limited flexibility provisions). On its face, the document states that "the Administration is determined to assist the beleaguered textile and apparel industry and is committed to its health and growth" and pledges the "aggressive" and "prompt" enforcement of U.S. rights under the MFA.

Specifically, the actions pledged include (1) efforts to greatly reduce the use of flexibility provisions; (2) expanded measures to monitor import trends, particularly "surges that cause market disruption"; (3) actions "to assure" that 1979 imports will not exceed 1978 levels and that, in future years, import growth will be limited to the growth in domestic consumption, within import categories; (4) closer coordination with industry and labor groups to allow faster response to changes in import levels; and (5) "full and prior industry/labor consultation on strategy, outlook and problems with respect to bilateral agreements."

Whatever the document says or does not say, it is clear that it is in no way binding on the new Administration.

[5] Keesing and Wolf at 108.

[6] Council on Wage and Price Stability, "Textiles/Apparel, A Study of the Textile and Apparel Industries", Washington, D.C. (July 1978) at 70. The figures in the first quoted paragraph are all annual cost figures.

NRMA believes that any proposal to reduce the minimum growth rate, as would be the case if such growth rates were tied to the growth rate of domestic consumption, should be rejected since the costs per job ($81,000) would be excessive. This cost is, we believe, far in excess of that which would be allowed for any other government program or regulation, and the standards for government intervention through the imposition of quotas should be no lower than those for other forms of government regulation of the marketplace.

The costs to consumers of even maintaining the existing 6 percent growth rate are themselves unacceptably high, as indicated in the above figures. These costs, and the corresponding calculations in other studies, are one of the primary bases for NRMA's recommendation that the MFA be phased out entirely. In this regard, a recent Federal Trade Commission staff report specifically reviewed the costs and benefits of removing all restrictions on trade in apparel products and concluded that the benefits would far outweigh the cost, even in the first year, to which the FTC study allocated *all* of the adjustment costs. The net gain for the first year of totally free trade was calculated to be $1.3 billion.[7]

The inflationary effects of the MFA and related restrictions have also been severe in other developed countries. Studies by trade associations in Britain and on the European continent have shown costs which are consistent with those found by COWPS and the FTC in the United States. The British study showed price increases at the source (i.e., price increases by the producers in the exporting countries) of 15-40 percent in all product categories due to the imposition of the quotas. The European study showed similar 30-40 percent price increases at the source, which the two World Bank economists cited above translated into 5 to 10 percent retail price increases generally and "much more in the low-cost items, compared with the price that would prevail with the same tariff but no quota." [8]

Even with the cost now imposed by quotas, consumers benefit significantly from the availability of imports from the developing countries. In 1978, William R. Cline, Senior Fellow at The Brookings Institution, reported the findings of an extensive market survey of the actual retail price of comparable imported and domestically produced goods, showing that imported products overall cost 10.8 percent less than comparable domestic products.[9] In the apparel area, the consumer cost for items imported from developing countries was 11.6 percent less than for the comparable domestic items.[10] Obviously, further reductions in the availability of products from developing countries would reduce these consumer benefits.

Thus, the U.S. must enter negotiations for the third MFA with a full understanding of the costs that the MFA-related protection have imposed on consumers and of the history of this protection—an expanding departure from the normal principles of world trade. The time has come to reverse the trend towards expanding and permanent restrictions in the textile and apparel trade.

C. *Specific Issues*

In brief form, the following are NRMA's conclusions on the key issues which must be resolved as part of the process of renegotiating the MFA. Also addressed are a number of points raised by other groups interested in textile and apparel trade policy.

1. *Coverage.*—Only those products which are made by U.S. industries showing both (1) the need for continued protection from more competitive overseas sources and (2) the likelihood of competitive improvement under short-term protected conditions should be included in the coverage of a renewed MFA. In light of the extraordinary growth in exports of U.S. textiles, coupled with the relatively stable flow of imports over the last decade, there is no need for continuing the comprehensive protection of the MFA for U.S. textile producers. American textile exports are a major factor in the world market, and the firms in the textile business are almost uniformly healthy.

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[7] Morris E. Morkue, David G. Tarr, "Staff Report on Effects of Restrictions on United States Imports: Five Case Studies and Theory", Federal Trade Commission, Washington, D.C. (June 1980) at 156.

[8] Cited in Keesing and Wolf at 106-107. The authors express some uncertainty about the precise magnitude of the price effects, because of the difficulties of isolating the impact of a single event in a period of general inflation, but they are emphatic in the basic conclusion that the MFA-generated quotas are very costly to consumers.

[9] William R. Cline, "Imports and Consumer Prices: A Survey Analysis" (pamphlet), Washington, D.C. (1978). Cline's study was also reported at 55 Journal of Retailing 3 (1979).

[10] Apparel imports from developed countries were an average 4.3 percent higher in price than domestic items, demonstrating that products are imported for a variety of reasons—styling, quality, uniqueness, and absence of domestic supply, for example—not necessarily including lower costs.

2. *Period of Extension.*—As stated above, NRMA favors continuation of the MFA, but only as a temporary agreement with a clearly specified date for termination of MFA-type protection and return to GATT principles. This was the basis for its initial negotiation and is in the Preamble to the MFA as its stated objective. We believe that there should now be an explicit timetable to phase out these departures from general GATT rules [11] over the next 10 years.

As indicated above, it is already clear that the American textile industries no longer need the extraordinary import protections of the MFA. Apparel firms, some of which need continued MFA protection to permit reasonable transition to a more competitive mode, should be assisted in every way possible so that they adjust to the competitive marketplace. A firm commitment to return to GATT-governed trade by a date certain will provide important—indeed, absolutely essential—incentives to the industries and workers involved, provide them with a timeframe to plan strategies, and focus government efforts to assist them. The apparel sector, it is clear, can adjust to foreign competition and, indeed, thrive if it has the incentives to do so. This capacity is amply demonstrated in several compelling works.[12] The absence of a fixed termination of MFA-type protection all but eliminates any meaningful incentive for serious attempts at adjustment.

Growth.—Consistent with the view that these restrictions are and must be only temporary aids to industries which are moving toward world competitiveness, NRMA supports continuing quota growth provisions at the present six percent annual level, with no exceptions. We specifically reject the notion that quota growth should be tied to growth in domestic consumption, either generally or with respect to a particular product. Such a proposal is fundamentally inconsistent with a temporary program, ignores the fact that these restrictions are themselves an artificial restraint on the market, and exacerbates the costs imposed on consumers by these restrictions.

4. *"Reasonable Departures".*—The current extension protocol allowing "reasonable departures" from the guidelines of the MFA has been misused to the point that the guidelines have become virtually meaningless in some areas. Keesing and Wolf, the World Bank analysts quoted above, describe the situation as follows:

"In retrospect it is now clear that the exception to MFA rules allowed to the European Community, under the guise of 'reasonable departures', has changed the arrangement fundamentally. It is almost impossible to see the quotas allowed by the Community to Hong Kong or South Korea as anything but a sharp departure from the norms of the MFA even if the Community likes to pretend otherwise. In practice, Sweden, Norway and others were not slow to plead exceptional justifications for similar violations of these norms. What has since been in effect has been a departure from a departure—a waiving of the provisions of an agreement which itself was derogation from GATT principles." [13]

The "reasonable departures" provision and the practices it has spawned must be eliminated in a new MFA.

5. *Administration.*—NRMA supports a stronger, more effective administration of the MFA. In particular, NRMA believes that the Textile Surveillance Board ("TSB") should be improved and strengthened so as to be more effective in making objective analyses of particular problems brought before it. In order to do its job impartially, the TSB needs appropriate and sufficient staff to allow independent economic analyses of the particular problems it is asked to address. Better enforcement, by achieving a higher degree of uniformity of interpretation, will benefit all parties to the MFA and will operate to discourage arbitrary and trade frustrating departures from the Arrangement by individual countries, once the objective "watchdog" status of the TSB is established and understood.

6. *Flexibility.*—Again in keeping with our conviction that the MFA must be a temporary arrangement and, more specifically, that it should be phased out over the next decade, NRMA supports the levels for carry forward, carry over, and "swing"

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[11] The phasing out of the extraordinary restrictions imposed under the MFA will hardly leave the domestic industries at the mercy of foreign producers. These products are subject to extremely high tariffs, which would continue even in the absence of an MFA. Obviously, the general provisions of GATT and our trade laws, especially the "escape clause" process, continue as means of protecting our industries when such protection is warranted.

[12] "Marketing Strategies for U.S. Apparel Producers to Compete More Effectively with Imports," prepared for the Georgia Institute of Technology by Kent Salmon Associates, February 1980, under U.S. Department of Commerce Grant No. 99-26-09857-10; "Corporate Response to Import Competition in the U.S. Apparel Industry," de la Torre, Jedel, Aspon, Ogram, Toyne, 1978, Research Monograph No. 74, Publishing Services Division, College of Business Administration, Georgia State University, Atlanta, Georgia.

[13] Keesing and Wolf at 70.

in the present MFA. These "flexibility" provisions are commercial imperatives for meeting year-to-year changes in consumer demand, due to new products, fashion shifts, or economic conditions. Without these provisions, consumers will often be deprived of the supplies of items they want and will be required to pay higher prices for supplies they are offered.

7. *807.*—Goods assembled abroad from American components, and therefore falling under section 807 of the Tariff Schedules of the U.S., should not be counted against any quota. In the case of the United States, such goods are now simply counted against the regular applicable quota, contrary, we believe, to the purpose of the 807 program—to encourage development of U.S. piece goods production by allowing firms to take advantage of less expensive foreign assembly operations while paying reduced U.S. duties when the assembled products are imported into the U.S.

8. *Globalization.*—NRMA urges rejection of proposals which would create or allow global restrictions by quota category applicable to all sources of supply, whether or not covered by a specific quota arrangement. Global quotas, to the extent they are appropriate, are already possible through the U.S. "escape clause" provisions. The MFA was designed as an extraordinary and unprecedented departure from these provisions. In return for release from any evidentiary standards, no less those of the "escape clause," and for the application of very tight restrictions on a country-by-country discriminatory basis, the developed countries and their domestic producing interests, in effect, bargained away the broader relief of global quotas. Substituting this broad "escape clause" relief would abrogate the original trade-off, would further undermine the GATT, and would encourage every troubled domestic industry to seek extraordinary relief outside of the GATT structure, ultimately defeating that structure with the attendant dire consequences associated with chaotic international trading relationships.

9. *Tiered System.*—NRMA opposes suggestions to discriminate as a class against the most successful developing countries by creating different categories or tiers of producer countries under the MFA. Not only would this be the most blatant form of discrimination in violation of the basic spirit of the GATT, but it would also inflict the greatest harm on American consumers by depriving them of goods from those who are best at producing them.

We believe that the goal of the proponents of this approach—and the likely effect of its adoption—is an overall reduction in imports from all sources. This would occur because there is scant likelihood that the smaller, less developed countries will be able to supply the quantities which would be reduced from the larger suppliers. It is also worth noting that even countries generally viewed as "small suppliers" overall are often large suppliers of a particular product. These countries would not only be penalized for their current development but typically are in no position to diversify their product mix. The proposal, thus, would not likely benefit any less developed countries, would raise consumer prices, and would substantially diminish consumers' access to quality merchandise at reasonable prices and in varied styles.

10. *Negotiation Process.*—Finally, but by no means least importantly, NRMA cannot emphasize enough our distress over the internal process by which the United States' positions on textile and apparel trade policy are developed. Retailers, importers and consumers have generally been left entirely outside of the process. There is not one retailer, importer or consumer who is cleared, as an "industry advisor," to examine and discuss confidential trade positions and strategies; all such clearances are routinely granted to members of the manufacturing industries and the related unions. The Carter Administration's "White Paper" on textile policy was developed in secret consultations with producing industry and union officials. This kind of process undermines the credibility of our position internationally, with our government viewed as nothing more than the mouthpiece of the producing industries, and domestically, where secret deals with special interests contribute to the public's general distrust of government.

In the extreme, such a policy development process accords almost total power to one side of the issue, giving these favored interests what amounts to "veto" authority over all U.S. options in this area. We submit that it is not only highly improper for any group of interests to have such power but that it seriously undermines the nation's ability to negotiate in this area with the flexibility necessary to serve the best interests of the nation as a whole.

Criticism by retailers of this disgraceful state of affairs has been made repeatedly over the years. While retailers have served on an official Commerce Department advisory body, the official advisory structure, unfortunately, plays only a tangential role in serious policy-making. This policy-making is accomplished more directly through consultations with cleared private sector "industry advisor."

11. *Compelling Need For High Level Review of American Textile and Apparel Trade Policy.*—In light of this historically closed system, of the numerous critical issues in the extension negotiations, and of the importance of the MFA to the American and world economic systems, NRMA strongly urges that a new look at textile and apparel trade policy be undertaken at the highest levels of our government, perhaps by the Trade Policy Committee, and that this review include the opportunity for all interests, particularly retailers, importers and consumers, to participate in a serious and meaningful way.

INDUSTRIAL POLICY

Import protection is, of course, only one part of our overall trade and economic policy. As discussed above, NRMA believes that there are more direct, less disruptive and more effective means of providing assistance to our industries than the imposition of restrictions on imports. We have been encouraged by a number of recent trends toward federal government adoption of basic regulatory reform, which will remove many unnecessary burdens from our domestic industries. We are also pleased by the reexamination of how government economic policies of all types affect our industries and the broad-based support for the proposed Capital Cost Recovery Act.

If this is indeed a trend, it would represent a major improvement for all U.S. industries, but especially for those in competition with overseas producers. Moreover, we believe that this approach may be far more beneficial to import-impacted industries than existing "trade adjustment assistance" efforts, which focus on short-term relief for companies, communities, and, most importantly, workers, but which were never envisioned as methods for overhauling or repositioning entire industries. In particular, the adjustment assistance program was not equipped, legally or practically, to review the range of regulatory, tax, and other government-related effects on industries and to implement—or, indeed, even recommend—changes necessary to give the industries a serious chance at becoming competitive.

The first benefit of a move to examine policies affecting entire industries and shaping new policies to benefit those industries is that this approach offers benefits without shifting the cost to other sectors of the economy, as is the case with protectionist measures. In fact, the entire business community benefits from improvements in these industries. While retailers view world markets as important elements of their business, there is no doubt that retailers and their customers would prefer to purchase products made in the United States. The general economic gains made in helping industries modernize and vitalize themselves inure to the benefit of just about all sectors of our economy. For retailing specifically, the general economic gains are critical; the workers who share in those gains are our customers.

NRMA is particularly heartened by an October 1980 report by the Northeast-Midwest Institute. Speaking from the perspective of our great industrial region—a region suffering from the problems of stagnation in its industries and the source of many calls for import control—the Institute calls for a new approach to import competition. The study rejects simple import restrictions, stating:

"[T]he political power of some industries facing strong competition leads the government to try to prop them up, usually by limiting imports. As a result, firms in those industries often are freed from the market forces that push other industries to innovate and work to keep prices down." [14]

It also faults the existing assistance programs: "these policies generally lack coordination and almost all are enacted after domestic industries have been injured." [15] Its recommendations call for instituting an "early warning system" to identify industries which are likely to fall behind, so that their situations do not become desperate before assistance is provided, and developing a coordinated, cooperative approach to solving the industries' problems.

The Institute's report also recognizes that some industries have a limited future: "The adjustment process will be most painful for communities that depend on industries with little hope for regaining international competitiveness. The solution, however, is not to permanently prop up the companies to save the jobs, but to use assistance to help workers adjust to the new situation by developing effective retraining programs for employees, helping firms close down in an orderly manner, bringing new industries into the same labor market, and promoting creation of local companies to generate replacement jobs. The emphasis on change is important;

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[14] Northeast-Midwest Institute, "Moving from Reaction to Anticipation in U.S. Import Policies," Washington, D.C. (October 1980) at i.

[15] *Id.* at 1.

otherwise large parts of American industry will languish behind high import barriers and produce unnecessarily expensive goods with obsolete technology." [16]

For industries which can recover, the report emphasizes "management skills, access to capital, research, and investment incentives." [17] Obviously, the solutions to the problems of each industry and company will be unique and should not center on excessive government involvement. In fact, much of what government can and must do relates to removing burdens which various programs and policies have placed on these industries.

In sum, reduction of regulatory burdens, broad-based investment incentives through the tax structure, and other efforts consistent with our free market economy offer, we believe, a long-range strategy to the "problem" of import competition, without the inflationary, anticonsumer side-effects of import protection.

CONCLUSION

The continued existence of an MFA applicable to apparel products and acceptable to both importing and exporting countries is, we believe, essential to the short-term stability of world apparel markets. The MFA should not, however, be allowed to become a permanent prop for inefficient and outdated industries to the detriment of American consumers and other commercial and industrial sectors. Further, the MFA must be viewed in the context of all of the trade interests of the United States and its industries. We must recognize that continued use of excessive restrictions in this area comes at the expense of other sectors of our economy, including those which rely on exporting to other countries. Our policies must be directed at achieving the long-term viability of our economy as a whole.

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[16] *Id.* at 24.

[17] Id.

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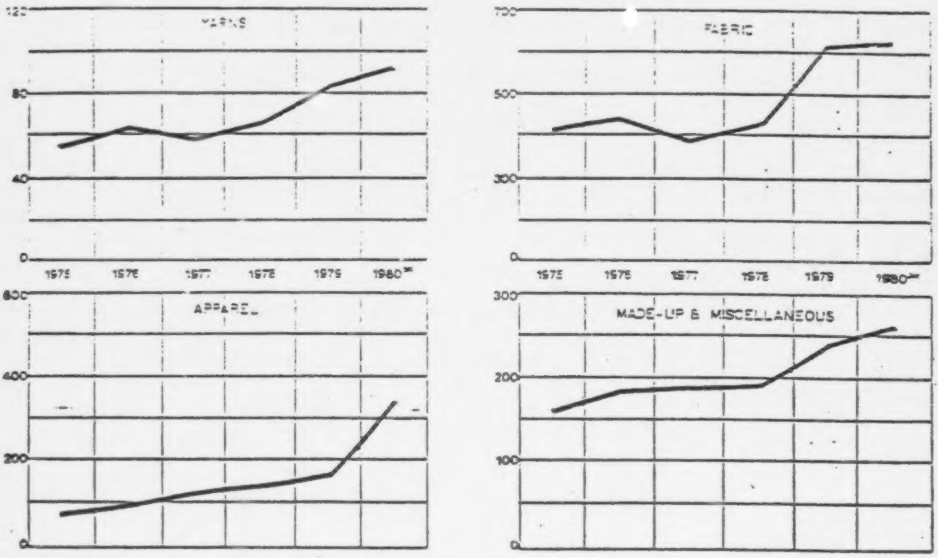
U.S. EXPORTS OF TEXTILE MANUFACTURES

(by calendar years)

(million pounds)



*ANNUAL RATE

GROUP	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980 Jan-Sep
COTTON											
Yarn & Thread	17.7	15.2	21.5	20.7	24.0	17.0	18.5	16.9	32.0	34.1	36.1
Fabric	112.9	130.8	174.5	189.8	231.1	217.4	248.4	204.0	192.6	272.9	168.9
Apparel	30.0	30.3	34.3	39.9	40.1	42.5	54.3	65.3	61.8	89.9	142.4
Miscellaneous	37.6	46.0	55.7	74.8	97.3	76.8	92.0	83.3	69.3	80.0	58.9
Total Cotton	199.2	226.3	290.4	325.2	292.5	353.7	413.2	369.5	355.7	476.9	406.2
MAN-MADE FIBER											
Yarn & Thread	12.3	10.4	12.6	34.1	47.6	27.7	36.9	39.5	27.6	42.5	28.9
Fabric	92.5	84.6	95.2	147.2	201.0	184.0	191.2	188.6	239.3	332.1	300.1
Apparel	12.8	16.1	20.8	24.8	33.1	31.4	34.4	39.8	48.6	60.5	95.1
Miscellaneous	29.8	35.5	49.0	82.1	109.0	78.8	85.7	99.2	116.0	148.3	132.6
Total Man-Made	147.4	146.7	177.6	288.2	390.7	322.4	352.2	367.1	431.5	583.4	556.7
WOOL[1]											
Tops & Yarns	1.1	5.4	26.1	23.5	13.9	11.8	5.7	3.2	2.6	4.2	3.4
Fabric	0.4	0.5	0.6	1.1	0.9	1.3	1.0	0.9	1.1	1.5	1.1
Apparel	1.0	1.0	1.4	2.3	3.4	2.1	2.2	2.4	5.5	5.9	11.6
Miscellaneous[2]	2.4	2.3	2.5	3.9	4.8	3.9	5.0	5.0	2.4	2.7	1.9
Total Wool	4.9	9.4	30.6	30.8	23.0	19.2	13.9	11.5	11.6	14.3	18.5
GRAND TOTAL	351.5	383.4	498.6	644.2	706.2	695.3	779.3	748.1	798.8	1,074.6	981.4

[1] Export data for wool increased 5% to adjust for processing and waste and 8% further to adjust for reprocessed fibers. [2] Includes carpets and rugs. SOURCE: U.S. Department of Agriculture.

Chairman GIBBONS. Our final witness today is Mr. Richard C. Fenton, president, Committee for Small Business Exports. Mr. Fenton, welcome.

STATEMENT OF RICHARD C. FENTON, PRESIDENT, COMMITTEE FOR SMALL BUSINESS EXPORTS

Mr. FENTON. Thank you, Mr. Chairman.

Chairman GIBBONS. I am sorry it is so late in the day, but I am anxious to hear from you.

Mr. FENTON. I have also been learning a lot by listening.

I would like to preface my remarks, with your permission, by saying that I prepared my written statement last week, and arrived in Washington last night to learn of the bill which Congressman Frenzel—and I believe it is cosponsored by yourself, H.R. 5179—put into the hopper on Friday, and this has a great deal to do with my remarks, so I would like to first read my prepared statement with the understanding that I didn't know at that time anything about H.R. 5179.

Chairman GIBBONS. Certainly.

Mr. FENTON. And then make a few remarks about H.R. 5179.

Chairman GIBBONS. Fine, we will be glad to hear from you. We can understand how we catch you. We try not to surprise you in this committee. We always try not to make our legislation retroactive, anyway. Go right ahead, sir.

Mr. FENTON. I appreciate the opportunity to testify on the subject of trade policy, particularly as it affects smaller companies. My name is Richard C. Fenton. I am president of my own small company of management consultants, Fenton International Inc., which helps small and medium size companies develop their international business. I am also representing the Committee for Small Business Exports—COSBE—which I founded and of which I am president.

The Committee for Small Business Exports has been operating about 2 years and has a membership of more than 100 companies in 30 States from coast to coast. All the members are smaller companies, well below the Fortune 1,000 in size, and all are manufacturers, traders or consultants involved in exports from a variety of industries. Although the number of our actual members is still relatively small, it is growing steadily all the time.

We also know that several associations of smaller companies around the country are sympathetic to our principal recommendations. Very similar recommendations were also made by the January 1980 White House Conference on Small Business. So we believe we speak for thousands of smaller companies which are involved in exports.

In theory everyone acknowledges the importance of small business. As President Reagan has said, in proclaming Small Business Week last May:

> Small business accounts for over 60 percent of our jobs, half of our business output, and at least half of the innovations that keep American industry strong. The imagination, skills and willingness of small businessmen and women to take necessary risks symbolize the free enterprise foundation of the American economy and must be encouraged.

I have underscored the last words. It is also well known that during the past two decades business activity has steadily shifted away from individuals toward large, centralized organizations. For the first time in U.S. history, the share of gross national product held by large business has passed the share held by small business, and the trend line suggests that by the year 2000, large business may account for almost 50 percent more of GNP than small business. Again, in theory, everyone acknowledges the importance of exports. I do not need to expand on this to this subcommittee. Our huge trade deficits, and the consequent loss of jobs and taxes, speak for themselves.

One would think that the needs of small business in the export field would attract particularly favorable action by policymakers. Yet, almost 2 years after the White House Conference on Small Business, none of the principal recommendations relating to exports has been implemented. The export trading company bill appears to be slowly moving toward agreement, but a satisfactory bill is not yet certain. The improvement of the DISC for smaller companies, although embodied in section 5 of Congressman Schulze's Small Business Tax Relief Act, H.R. 1600, has not moved at all, nor have the other recommendations regarding help for smaller companies with the cost of trade fairs and FCIA premiums.

Another example of the difference between theory and practice is the composition of the President's Export Council. Only 1 out of 28 private sector members represents a small manufacturing company.

Furthermore, the enactment of the export trading company bill, if it is enacted, will not help the many thousands of smaller companies which prefer to handle their own exports. Having struggled to establish their own export position, they are not likely to turn it over to a trading company. The latter will be more useful to the company that has done little or no exporting, and does not feel itself capable of striking out on its own. The more aggressive, thrusting, innovative company, the very type that public policy should encourage, needs individual incentives, as requested by the White House Conference, and embodied in H.R. 1600, section 5.

It should not be surprising that smaller companies are disappointed. As an example of many comments we have received, I will quote from a letter sent to us last September by the president of a small manufacturing company in Illinois which has a branch in Florida:

> I am most unhappy here in that it appears these two Bills (H.R. 1600, Section 5, and its companion in the Senate, S. 1097) are not going to be included, on a current basis, in the tax package. I know that for my company, it is vital that the DISC program stays in place. At the present time, it really makes the difference between staying in the foreign market or being driven out.
>
> With the tremendous strength of the dollar and the weakness in foreign market sales, we are having a considerable down fall in our export sales and can see no relief for months to come. I am sure a number of the small business group, exporting, are having the same problem. I cannot believe that by the small businessman selling an export that the DISC is giving us such an unfair advantage, with and against our foreign competition. That really should be considered.
>
> When we consider the subsidy granted to the foreign exporter and, in fact, the foreign manufacturer, on a local basis versus the almost nothing that our government does for its business community, it is a laughing matter. In our industry, piece by piece, we are finding the Japanese are invading our market and from what we know, duffing the prices. As a small business, with a small share of market, domestically, we have a terrible time trying to develop a method of fighting it.

This brings me to the present discussions about replacing the DISC with some alternative tax incentive in order to satisfy some of our competitors in the GATT. It is alleged that some of these alternatives would be better than the DISC, even for smaller companies.

The first problem is that we, the Committee for Small Business Exports, which is the only organization in the country, as far as we know, which represents only smaller companies which are exporting, are not being consulted. Being based away from Washington makes it hard to keep ourselves informed, and apparently we are easily forgotten. We cannot afford much of the time of a Washington counsel. Other small business organizations based here in Washington do not seem to take much interest in exports. So the point of view of the smaller company is being underrepresented. The second problem is that we are unable to understand how any of the proposals we have so far seen will be better than or as good as the DISC for most smaller companies. One popular model of a DISC replacement would require incorporation outside this country. This is, of course, no problem for a large multinational, but it is very much a problem for a small company which only uses distributors abroad, not subsidiaries or branches, has no in-house lawyer, whose outside lawyer may not be familiar with the way to proceed, and which, in any case, cannot afford much time of lawyers.

More important, if the only pricing basis from the manufacturer to the new DISC is "arms length," we cannot see how much, if any, profit can be allocated to the new DISC, as compared with the present 50-percent division of the total gross profit on an export between manufacturer and DISC, or the special 4 percent of sales rule.

Third, even if a way around this problem could be found, unless the pricing rules are as simple as the DISC pricing rules, there is going to be continual argument between company and IRS about the arms-length prices. Again, the large multinational may be able to cope with this kind of argument, with its in-house tax lawyers and support from outside, but the smaller company cannot afford these.

Of course, we readily agree that in some ways the DISC is fairly complicated, and if a simpler incentive could be found which would satisfy our GATT competitors, and which would permit as much tax deferral, or even better, tax credit, we would be very pleased to look at it.

However, the complexities of the DISC have been exaggerated. There are rather simple and economical ways of forming and operating a DISC, which are becoming more widely known. In fact, it costs about $200 to form a DISC and it takes all of 3 hours a year to operate one. After all, there are now close to 10,000 operating DISC's, and obviously most of these are smaller companies.

According to the last annual DISC report by the Treasury, covering the DISC year 1979, about 88 percent of DISC's with net incomes had net income under $1 million. Similarly, about 86 percent of DISC's had gross receipts under $10 million. Clearly, by far most DISC's are relatively small companies. So they must have found their way through the complexities.

It should also be clearly understood that, as our member whom I quoted a moment ago made clear, DISC is very important to smaller companies. I would go so far as to say that DISC is probably relatively more important to smaller companies than to large ones. The latter have the necessary expertise and the necessary capital to fight the competitive battle abroad. Most are not seriously hurt by high interest rates.

The smaller company is short of technical expertise and particularly short of capital. It can be crippled by high interest rates. DISC can make the difference for the smaller company between success and failure abroad. The relative value of the incentive to the individual company is great.

Yet the cost in total deferred taxes to the Treasury, as the annual report makes clear, is quite small for smaller companies. In 1979, only 14 percent of total net income of all DISC's was earned by DISC's with less than $1 million of net income, although 88 percent of all DISC's with any net income fell into this category.

As you know, section 5 of H.R. 1600 would eliminate the "incremental rule" and the "deemed dividend distribution" for DISC's with up to $1 million of income. The cost of this in taxes forgone by the Treasury was estimated 2 years ago at $19 million the first year rising to $137 million in the fifth year. It would be somewhat more now, but clearly not a major amount. In fact, many people, including myself, believe that the actual net cost to the Treasury would be nil because of the additional exports that the smaller companies would be persuaded and enabled by the additional capital to achieve. Please remember that under the law the deferred taxes must be invested in export business.

In summary, on behalf of the thousands of smaller companies involved in exports, I urge this subcommittee:

One, to act favorably now on section 5 of H.R. 1600. When you are ready to do so, we would like to work with your staff to suggest amendments to carry out the recommendations of the White House Conference with regard to FCIA premiums and trade fairs. We urge you to provide an improved incentive to export for thousands of small, thrusting, innovative companies on which our economic future, domestic and export, could well depend.

Please also bear in mind that we are not asking for a handout, only that these companies may keep more of the profits they earn on their exports, on condition that they invest the additional deferred taxes in building more exports.

Two, we urge you to consult the Committee for Small Business Exports, and any other small business organizations that you wish, before you settle on any replacement for the DISC. Please bear in mind that the law and regulations for smaller companies do not have to be the same as for large corporations. The needs of smaller companies are different and should be addressed.

That is the end of my prepared statement. I would like to make a few comments about H.R. 5179; with the understanding that I only got a copy of the bill this morning.

I have read it a couple of times. There are obviously a number of technical matters which I should consult other people about.

There are many good featurs that I can see about this bill. Many of the objections which we had before to the ideas which had been expressed by the U.S. Trade Representative's Office and others have been met. You have included in the bill the DISC pricing rules. That removes a problem, particularly for smaller companies. The biggest problem we would have on behalf of smaller companies with H.R. 5179 is that a foreign corporation must be organized and operated.

Remember that these thousands of smaller corporations around the country have never set up a foreign company. They operate through distributors abroad, not through subsidiaries and branches.

They are going to have to get legal advice, which is expensive. They are going to have operating problems if, as I understand the bill so far, the foreign company is going to have to have substance. These operating problems would include accounting abroad once the corporation is set up.

There probably would have to be some staff. The corporation could not be a paper corporation like the DISC can. This is going to involve a lot of expenditure for a small corporation. In my opinion, if we cannot find a way around these problems we are going to lose a lot of the enthusiasm and interest of many of the smaller companies that are involved in exports. They just will not want to participate.

I would like to make some suggestions at this point. We may have others I would like to write about. I would like to see consideration given to two possibilities. One, and only for smaller corporations, let us say, as in the Schulze bill, DISC's with less than $1 million of net earnings, could we not keep the DISC for them only, and improve it on the same lines as your bill, H.R. 5179, and on the same lines as the Schulze bill by removing the incremental rule for these smaller corporations and having a 100-percent deferral?

That would be one alternative. If that wouldn't satisfy the GATT, if our foreign competitors still make a big fuss about these thousands of smaller companies that add up to rather a small total amount of money and cannot be a real factor in the competitive situation.

And if the Government still feels it is essential to satisfy our competitors, even with respect to smaller corporations, then rather than have to face a foreign corporation, I would suspect that many smaller corporations would prefer to have an interest charge.

As I understand it, that would satisfy the GATT. The interest, hopefully, would not have to be several points above prime, but it could be something under prime.

After all, the large corporations get preferential interest rates in the Eximbank. Why could not the smaller companies have somewhat preferential interest rates on the DISC on deferred income? That would be one alternative, to keep the DISC for smaller corporations, improve it in line with H.R. 1600, section 5, and maybe if absolutely necessary, charge a modest interest.

The second alternative would be to try to devise a foreign paper corporation whose accounting could be done here in this country. Now, I don't know how that could be done, but it may be possible.

We will try to help figure that out. We would like to be constructive about this. There are many good features, as I said before, about H.R. 5179 that would be helpful if they carry out the intention of the Schulze bill.

But we think we would have to get around this problem of foreign incorporation, if H.R. 5179 is to be attractive to smaller companies.

Thank you, Mr. Chairman.

Chairman GIBBONS. Well, thank you, sir.

In H.R. 5179, we were trying to find ways of making something GATT-compatible. As you know, we are running into serious problems with GATT compatibility as far as DISC is concerned. Maybe we haven't solved it.

I was sitting here, and I was thinking about the way you could have a foreign corporation. I was fishing one time. I saw an island off San Diego that is Mexican. Maybe we could turn that into a foreign headquarters—it is only about 1 hour's ride via boat to it and you can do some fishing along the way.

Mr. FENTON. The problem with Mexico is that they have a rather high tax.

Chairman GIBBONS. Well, we will have to find someplace else. We must be able to find one around somewhere. We are trying to find something that is DISC compatible. That is the reason for the struggle there.

We would be glad to have your suggestion as to what can be done. I hope that we can iron out our differences with the GATT on DISC, and perhaps do some of the things that are in the Schulze bill, and some of the suggestions that you have made.

I am intrigued that you, as a small company, have found it possible to export. What kind of product do you make and export?

Mr. FENTON. My own company is a consulting firm. We help many of these firms that I am talking about to improve their own exports.

Chairman GIBBONS. I see you are associated with our old friend Tom Reese, here.

Mr. FENTON. Yes.

Chairman GIBBONS. Tom is a very able fellow.

Mr. FENTON. Yes.

Chairman GIBBONS. What kind of products do most of your small firms export? I guess a little of everything.

Mr. FENTON. Yes. They range from high technology to regular kinds of products. I would guess mostly higher technology kinds of products.

Chairman GIBBONS. You know, I run into these people that don't think they can export a product. I have a constituent that exports mattresses. I can't think of anything that is more labor-intensive than making a mattress, really. It is not a high-technology product.

He told me they just happened to be in the United Kingdom one time, and dropped by a department store over there and told them they had some mattresses for sale. And he sold them a few.

They asked for more. He's finally shipping them shiploads of mattresses now. And now beds to go along with the mattresses.

I would think if you could export beds and mattresses, you could export many other things in our society.

Mr. FENTON. As a general rule, I advise companies that if they can successfully market a thing in this country, they can successfully market it abroad.

Chairman GIBBONS. I guess that is a good rule. It is just a matter really of trying. Of course, he was in a market where they spoke English and where the business practices weren't far different than they are here.

But he was surprised how easy it was to export, how profitable it was to export in a market that ordinarily ought to be able to produce very comparable products.

Mr. Fenton, we thank you for coming. This concludes our hearing for today and we convene tomorrow at 9:30 a.m., back in the Ways and Means Committee room, in this building in room 1100.

Tomorrow will be the last day of hearings for this session of Congress. We will resume as rapidly as we can after the recess.

[Whereupon, at 5:12 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Wednesday, December 16, 1981.]

U.S. TRADE POLICY

WEDNESDAY, DECEMBER 16, 1981

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, D.C.

The subcommittee met at 9:45 a.m., pursuant to notice, in room 1100, Longworth House Office Building, Hon. Sam Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Our first group will be a panel from the electronic industries.

This, as everyone knows, is a continuation of the oversight hearings of the Trade Subcommittee of the Ways and Means Committee.

We have spent quite some time listening to and interrogating the administration about their plans and their execution of American trade policy.

We are now in the process of hearing from the non-Government sector about the trade policy of America, plans for the future and execution of plans.

We are happy today to start with this distinguished panel, a panel really on the cutting edge of America's trade opportunities.

I want to first call on and recognize our distinguished colleague, Mr. Stark.

STATEMENT OF HON. FORTNEY H. STARK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Stark. Thank you, Mr. Chairman, for letting me join you this morning. I am honored to have one of our colleagues, Mr. Don Edwards, from California, with our witnesses this morning.

I would ask consent we ask Mr. Edwards to introduce the witnesses to the panel. Don.

[The prepared statement follows:]

Statement of Hon. Fortney H. Stark, a Representative in Congress From the State of California

Mr. Chairman, members of the committee, with your permission, I would like to file a statement before the subcommittee.

This morning, I just wanted to introduce several Californians who are participating on the high technology electronics panel and to commend their statements to you.

In terms of our competition with Japan, for the sake of increased productivity and exports, there is clearly no more important task before Ways and Means than promoting the growth of these high technology industries.

While I am here, I would like to make about three points.

First, when you mark-up legislation to extend the President's tariff negotiating authority (section 124 authority), I hope that you carefully specify the areas that you want that authority used. And I hope that one of those areas that you specify is in support of this morning's testimony in favor of lower multilateral tariffs on semiconductors and advanced circuits. The position of the SIA and some of the other groups here this morning is very statesman-like and far-sighted—it should be supported. (I bet, Mr. Chairman, that you can count on the fingers of one hand the number of groups that have ever come before you in support of full competition and lower tariffs!) Of course, lower tariffs are only part of the picture; we must institutionalize procedures to ensure that there is truly fair and free trade—so-called national treatment—in semiconductors and other advanced components.

Second, and switching subjects, I hope that in the new year, the Subcommittee can translate the findings of the study on trade barriers in alcoholic beverages which was provided for in the Trade Agreements Act of 1979, into some directives for negotiations to gain our wine and alcohol-beverage industries greater market access abroad. I have not had an opportunity to read the USTR's study yet, but I can tell you that our California wine and brandy industry are ready to export—and anyone who has tasted these products would be willing to buy them if foreign trade barriers could only be eased a bit. Frankly, if foreign barriers are not lessened, I predict that this industry will be in asking for retaliation against foreign imports.

Third, and finally, I am the House sponsor of the Services Promotion bill (H.R. 3848). This is the counterpart of Senator Inouye's bill. I understand that in the Senate, this legislation is starting to move and that the focus of attention will soon switch to the House.

It is a good bill, but frankly, not very exciting. Creating a new office in the Department of Commerce at a time when Commerce's trade offices are under budget pressure does not strike me as the complete answer to our nation's services export problems. Also, in the House, the bill has been referred to FIVE Committees. As you know from the Export Trading Company legislation, that is sure death for any bill.

Therefore, during the winter break, I would like to redraft the bill to get it referred only to Ways and Means so that it might move. I would also like to see USTR do more on Services, rather than Commerce. I would like to work with you on redrafting this bill in time for the 2nd Session.

By the way, trade in high technology services—such as computer timesharing—is one of our important service exports. And this brings me back to the starting point, your first panel this morning.

STATEMENT OF HON. DON EDWARDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. **Edwards**. Thank you very much, Pete, and thank you, Mr. Chairman, not only for your courtesy this morning, but for scheduling very important hearings and for inviting these particular witnesses to appear.

They come from the part of California, the San Francisco area known as Silicon Valley, that leads the world and the country in sophisticated research and production of electronics, semiconductors, and other high-technology products.

This part of our economy provides more new jobs than any other part of our economy. It does have problems, though, and these expert witnesses are going to describe them to you today.

We are fortunate in having Thomas A. Christiansen, director of the international trade policy for that great firm, Hewlett-Packard Co. He is also vice chairman of the International Affairs Committee of the Scientific Apparatus Makers Association.

Dr. Alex Lidow, who is vice president of research and development for the International Rectifier Corp., will testify on behalf of the Semiconductor Industry Association, and on my immediate right, Peter F. McCloskey, president of the Electronic Industries Association.

Mr. **Stark**. Is that the fellow running for Senate down there?

Mr. **McCloskey**. No, I am the real Pete McCloskey. [Laughter.]

Chairman GIBBONS. Congressman Edwards, we thank you for coming here and taking an interest in this as you have always taken an interest in all things that go on around Congress. And for presenting this fine panel.

And let me say to the panel, we will allow you to proceed in any manner you wish. You may be assured, though, that your entire statements, whether you read them or summarize them, will appear in the record.

Mr. STARK. Thank you, Mr. Chairman. I wanted to add, as long as I have this opportunity, that I would like to make a few points to the committee.

First, when you mark up legislation to extend the President's tariff negotiating authority—section 124 authority—I hope that you carefully specify the areas that that you specify is in support of this morning's testimony in favor of lower multilateral tariffs on semiconductors and advanced circuits. The position of the SIA and some of the other groups here this morning is very statesmanlike and farsighted—it should be supported. I bet, Mr. Chairman, that you can count on the fingers of one hand the number of groups that have ever come before you in support of full competition and lower tariffs. Of course, lower tariffs are only part of the picture; we must institutionalize procedures to insure that there is truly fair and free trade—so-called national treatment—in semiconductors and other advanced components.

Second, and switching subjects, I hope that in the new year, the subcommittee can translate the findings of the study on trade barriers in alcoholic beverages which was provided for in the Trade Agreements Act of 1979, into some directives for negotiations to gain our wine and alcohol-beverage industries greater market access abroad. I have not had an opportunity to read the USTR's study yet, but I can tell you that our California wine and brandy industry are ready to export—and anyone who has tasted these products would be willing to buy them if foreign trade barriers could only be eased a bit. Frankly, if foreign barriers are not loosened, I predict that this industry will be in asking for retaliation against foreign imports.

Third, and finally, I am the House sponsor of the services promotion bill, H.R. 3848. This is the counterpart of Senator Inouye's bill. I understand that in the Senate, this legislation is starting to move and that the focus of attention will soon switch to the House.

It is a good bill, but frankly, not very exciting. Creating a new office in the Department of Commerce at a time when Commerce's trade offices are under budget pressure does not strike me as the complete answer to our Nation's services export problems. Also, in the House, the bill has been referred only to five committees. As you know from the export trading company legislation, that is sure death for any bill.

Therefore, during the winter break, I would like to redraft the bill to get it referred only to Ways and Means so that it might move. I would also like to see USTR do more on services, rather than commerce. I would like to work with you on redrafting this bill in time for the second session.

By the way, trade in high-technology services—such as computer time-sharing—is one of our important service exports. And this brings me back to the starting point, your first panel this morning.

Again, I want to welcome my fellow Californians. Thank you for letting me interrupt you this morning.

Chairman **Gibbons**. You don't interrupt. We are glad to have you here, and we are glad to have your views. I agree with what you said there.

Mr. **Frenzel**. My constituents tell me you need more production for your wine and not more customers.

Mr. **Stark**. We are working on that. Supply-side economics is going to take care of that.

Chairman **Gibbons**. Well, that is all very good. Let's go on now with the panel.

STATEMENT OF THOMAS A. CHRISTIANSEN, MANAGER, INTERNATIONAL TRADE RELATIONS, HEWLETT-PACKARD CO.; VICE CHAIRMAN, INTERNATIONAL AFFAIRS COMMITTEE, ON BEHALF OF THE SCIENTIFIC APPARATUS MAKERS ASSOCIATION; AND THE AMERICAN ELECTRONICS ASSOCIATION, MEMBER, INTERNATIONAL COMMITTEE

Mr. **Christiansen**. Mr. Chairman, I am Thomas Christiansen, manager of international trade relations for the Hewlett-Packard Co., headquartered in Palo Alto, Calif.

I am appearing here today on behalf of the Scientific Apparatus Manufacturers Association, known as SAMA, and American Electronics Association, known as AEA.

These two associations are nationwide. Their combined membership totals some 1,700 electronics companies in the high-technology area.

The high-technology electronics industries represented today on this panel are some of the strongest positive contributors to the U.S. balance of trade.

It is true that in recent months we have had a little slackening in international demand. But despite this, we are quite confident of the future.

We have not come to the subcommittee today with our hats in our hands requesting relief. We expect to have continued success in our ability to compete abroad.

The degree of our success, however, will be highly dependent on actions that this subcommittee and other committees in the Congress and the administration take. If we are to remain competitive in the future, as we have been in the past, we believe this country must adopt a consistent overall policy which will:

First, promote the twin principles of free and fair market access abroad.

Second, build effective long-range economic policies to stimulate and maintain U.S. technological leadership.

Given this framework, let me briefly summarize SAMA's and AEA's views on some of the specific needs which we believe must be addressed by the Congress and by the executive branch.

I will be very brief on this. A more complete exposition of these views is in my written statement.

The first topic I would like to turn to is the post-Tokyo round activities. There are two central points here.

During the Tokyo round of multilateral trade negotiations, a landmark set of codes was developed to reduce nontariff barriers between the signatory countries. We believe it is essential that the administration vigorously pursue implementation of all of these codes. Without vigorous pursuit, we believe many of our trading partners will be inclined to lapse into their more restrictive, traditional practices: practices with which they are more familiar and, probably, more comfortable.

The second point relating to post-Tokyo round activities is congressional passage of the extension of the administration's residual tariff-cutting authority. This authority was used most successfully with Japan this year to accelerate the semiconductor duty rate reductions agreed to under the Tokyo round.

Given extended authority, we hope the administration might be able to negotiate other duty reductions which would benefit the high-technology electronics industry.

At this time, there are two measures before the Congress which are of particular interest to the high-technology electronics industry. I am referring to the export trading company legislation and to the amendments to the Foreign Corrupt Practices Act.

I won't dwell on either of these except to say that we believe both pieces of legislation deserve prompt attention and speedy passage.

I would like to talk a bit about domestic international sales corporations DISC, SAMA and AEA believe that the recent furor over whether or not our trading partners in the GATT would permit the United States to retain DISC is just another example of U.S. efforts to maintain smooth relations with other countries at the expense of our legitimate rights. We wonder why it is we should give up DISC while other countries support their export industries to a much greater extent by rebating value-added taxes.

It looks as if the DISC controversy is at rest, at least temporarily. But, of course, it may come up any time again.

The experience of high-technology electronics companies is that DISC has provided an important export stimulus. As an incentive, DISC has served to focus a great deal of attention upon the desirability of producing goods within the United States for foreign markets.

This has helped expand the level of exports in recent years. We believe DISC should be retained to promote exports and help U.S. employment. Elimination of DISC at this time would be equivalent to telling U.S. industry and U.S. workers that the U.S. Government does not care about exports. This is clearly not the case.

Let me now turn to research and development. Both trade associations, SAMA and AEA, believe that substantial reductions in the amount of U.S. investment in research and development have been a prime cause of the deteriorating competitive position of this country in world markets, and the declining productivity of the U.S. work force.

The need, quite obviously, is to focus more of this Nation's resources on R. & D.—the key which in the past has opened the door to the unparalleled success of U.S. industries at home and abroad.

There is ample evidence, described in my written statement, of a significant positive correlation between an industry's commitment to R. & D. and its growth in both domestic and export markets.

SAMA and AEA have both strongly supported a number of tax changes, contained in the Economic Recovery Act of 1981, which are designed to stimulate research and development.

Valuable as these changes are, we believe several additional actions need to be taken. Let me enumerate:

First, the definition of research which is now being developed by the Treasury Department for tax credit purposes must be broad enough to meet the needs of U.S. high-technology companies.

Second, the January 1, 1986, sunset date for the R. & D. tax credit must be extended.

Third, the tax credit for corporate donations to universities for research should not be limited by inclusion in the 3-year base period.

Fourth, the cost of capital for U.S. exporters should be brought into line with that of our competitors in Japan and Germany, where there is no tax on capital gains.

Fifth, U.S.-incurred research and development expenses should be made permanently deductible against U.S.-source income.

I would like to turn to the matter of export controls. Export controls are perhaps the major export disincentive confronting high-technology electronic companies. These controls, although necessary for national security, economic well-being and as an expression of our foreign policy, often discourage U.S. businessmen and put them at a competitive disadvantage.

We believe reduction or elimination of certain controls are essential, particularly at this time when our country desperately needs an improved trade balance.

Let me enumerate three or four areas where this might occur. Well over half of the estimated 85,000 export license applications received this year by the Commerce Department were for transactions with our Cocom partners, and with Australia and New Zealand. These transactions are almost invariably approved within a very short period of time. This being the case, we question the need for extensive licensing of shipments to these countries.

Another area of particular concern to instrument manufacturing companies is the export licensing of products containing microprocessors—small integrated circuits which are so popular and useful these days.

SAMA and AEA member companies are using an increasing number of microprocessors to increase the utility, versatility, and reliability of their products. This has meant, of course, a corresponding increase in export license applications, which is a costly and time-consuming activity.

We believe that it is high time for the U.S. Government to follow the policies of many other western governments and drop the requirement for export licensing of electronic instruments containing microprocessors, so long as three conditions are fulfilled:

First, the instruments containing microprocessors are not otherwise licensable;

Second, the microprocessors are used to facilitate data acquisition or other operational features; and

Third, the microprocessors cannot be reprogramed for other uses.

We also have considerable concern over the matter of unilateral export controls. We fear that the tense international situation, vis-a-vis the Soviet Union, and the growing concern of the Department of Defense over the transfer of technology, might somehow lead to a drastic increase in the number of unilateral export controls.

We believe that unilateral controls should be employed very sparingly, and only where it can be reasonably determined that they will have a direct, measurable effect on the target country or countries. We believe there is ample evidence that the effect of unilateral controls extends far beyond the specific situations which they are supposed to influence. Once established, they seem to have a life of their own and go on forever.

The United States, alone among the countries in the world, attempts to control the reexports of U.S.-origin commodities by its friends and allies. These unilateral controls hamper the ability of U.S. firms to sell their products abroad. In addition, compliance is very spotty. Foreign firms frequently ignore them. We believe steps should be taken to reduce these reexport controls, especially with respect to Cocom countries that cooperate closely with the United States in supporting a uniform system of export controls.

Finally, let me address the subject of export licensing delays. U.S. businessmen find that long U.S. licensing delays inhibit normal customer relations, tie up expensive inventories, and ultimately divert business permanently to foreign competitors.

We are very pleased that the current administration has recognized the need for more rapid decisions and within recent months has reduced the licensing backlog from over 2,000 cases to something on the order of 30 or so.

The effort required to accomplish this has been monumental. Nevertheless, we think it should be continued to prevent the backlog from building up again, and to give even more rapid responses—more rapid than the congressionally mandated timelines which were fairly liberal to start with.

Many SAMA and AEA companies face another problem in the growing number of investment barriers erected by various newly industrialized and developing countries. The barriers—a variety of governmental policies, formal and informal, adopted to restrict foreign direct investment—represent a kind of discrimination that effectively bars U.S. companies from full participation in a number of important markets.

In some cases, these limitations take the form of distinct laws and regulations. In many other cases, however, they are unwritten, and subject to the whims of political expediency.

In any event, these restrictions have an adverse effect on the restricting countries, for very few U.S. firms are willing to operate under such conditions. As a result, the economies of these nations are damaged by being deprived of the products and technologies they need.

If other countries are unwilling to open up their investment policies, we feel the U.S. Government should review our traditional open policy toward foreign investment in this country. There must be a realization of the vital relationship between trade and investment, and the enormous economic benefits these activities provide.

The policy of this country is to support free and open trade in investment flows. What we need now is to be more aggressive in persuading other countries to adopt similar policies.

In conclusion, Mr. Chairman, I should like to mention six future trends envisioned by SAMA and AEA:

First, we see increased competition from abroad. This grows stronger daily and will increase dramatically as more countries realize the importance of having a domestic high-technology electronics industry.

Second, greater attention worldwide will be paid to innovation and productivity. As a result, the need in this country for highly skilled R. & D. personnel, production engineers, and so on will continue to increase.

Third, capital equipment needs will continue to grow, particularly in the semiconductor areas as techniques become more sophisticated and as the obsolescence rate of current equipment increases. Nations where capital is available at reasonable cost will reap a greater advantage in advanced high-technology products.

Fourth, semiconductor products will become less costly per function as more and more functions are built in. Equipment manufacturers using these devices will see their direct labor costs reduced and both the reliability and versatility of their products improved.

Fifth, greater attention will be given to developing products which other industries can use to increase their productivity. For example, mechanical control devices in manufacturing operations, consumer products, and so forth, will be rapidly replaced by electronic products capable of performing more operations with greater precision. As a result, R. & D. and engineering personnel of many high-technology firms will have to work much more closely with other manufacturers and the end users than has been the case in the past.

Sixth, and finally, the complexity of products will increase dramatically as increased use is made of sophisticated semiconductor devices and computer technology. At the same time, there will be an increased demand for reliability, and pressure to develop software will mount.

Others on the panel will discuss a number of long-term U.S. negotiating objectives. What I have attempted to do is focus on several areas in which AEA and SAMA believe that you, as Members of the Congress, can assist high-technology firms in their continuing efforts to innovate, to increase productivity, and to best foreign competition.

Thank you, Mr. Chairman.

STATEMENT OF THOMAS A. CHRISTIANSEN, DIRECTOR, INTERNATIONAL TRADE POLICY, HEWLETT-PACKARD CO.; VICE CHAIRMAN, INTERNATIONAL AFFAIRS COMMITTEE, ON BEHALF OF THE SCIENTIFIC APPARATUS MAKERS ASSOCIATION AND THE AMERICAN ELECTRONICS ASSOCIATION

SUMMARY OF RECOMMENDATIONS

*** The Congress should enact legislation to permit the establishment of export trading companies, to amend the Foreign Corrupt Practices Act, and to extend the Preident's tariff cutting authority.

*** Domestic International Sales Corporations (DISCs) should not be given up.

*** The definition of "research" currently being developed by the Department of the Treasury in connection with the Economic Recovery Act should not be overly restrictive.

*** Tax credits for corporate donations to universities for basic research should not be limited by inclusion in the "rolling base" as presently provided in the Economic Recovery Act.

*** U.S. incurred R&D expenses should be made permanently deductable against U.S. source income.

*** Federal policy should address the skilled manpower shortage which now confronts the high technology industries.

*** U.S. export and re-export licensing requirements should be reduced.

*** U.S. export licensing requirements for products containing microprocessors should be eliminated or sharply reduced.

*** U.S. unilateral export controls should be applied sparingly, and only where it can be reasonably determined that they will have a direct, measurable effect on the target country(ies).

*** U.S. licensing delays should be further reduced.

*** The U.S. should seek to liberalize the restrictions the newly industrialized and various developing countries place on foreign direct investment.

Mr. Chairman and Members of the Subcommittee:

My name is Thomas Christiansen and I am Manager of International Trade Relations for the Hewlett-Packard Company which is headquartered in Palo Alto, California. In fiscal 1981, my company had a total sales volume of $3.58 billion. Of that, about 48 percent, almost one-half, represented products sold outside the United States. I should also note that I am currently serving as Chairman of Industry Sectoral Advisory Committee 5—Electronics and Instrumentation. I wish to make it clear, however, that the views I am expressing today are not necessarily those of the ISAC Committee.

I am appearing before you today on behalf of the Scientific Apparatus Makers Association (SAMA) and the American Electronics Association (AEA).

SAMA is a national trade association representing this country's manufacturers and distributors of a wide range of scientific, industrial and medical instruments and equipment. The 180 companies who are SAMA members, many of small or moderate size, consititute the bulk of American industry producing research laboratory, analytical, electronic test and measurement, and process measurement and control instruments, as well as clinical laboratory instruments, patient monitoring instruments, and a wide range of laboratory apparatus and equipment.

In 1980, the industries represented by SAMA produced and shipped products valued at over $12 billion. Exports account for about one-third of total sales, although in some SAMA companies, exports may amount to 50 percent or more of total sales. Since over a third of total sales are exported by those companies, it seems obvious that a substantial number of the jobs of more than a quarter of a million U.S. workers are directly dependent on international trade and the competitiveness of the United States in world markets.

The American Electronics Association (AEA) is a trade association of more than 1,500 electronics companies located in 43 states. Its members manufacture electronic components and systems or supply products and services in the information processing industries. While AEA member companies employ more than one million Americans and include some of the nation's largest companies, more than half of its member firms are small businesses employing fewer than 200 people.

Let me begin, Mr. Chairman, by expressing my thanks, and the appreciation of not only SAMA and AEA but the other organizations represented on the panel today for your continuing interest, and that of the Subcommittee, in the international trade and investment problems which confront the high technology electronics sector of the American business community. As a whole, the industries represented on this panel can be separated into several distinct categories, including the following:

- Industrial Electronic Equipment and Systems

  Computing and data processing equipment, testing and measuring apparatus, nuclear electronic devices, medical equipment, control and processing equipment, etc.

- Communciations Equipment and Systems

  Telephone equipment, satellites, radio and television broadcast equipment, mobile radio, radar, search and detection equipment, electronics mail, etc.

- Electronic Components

  Active components, including electron tubes, solid state devices, etc. Passive components such as capacitors, resistors, etc.

I am confident that the high technology electronics industries represented here today represent some of the strongest positive contributors to the U.S. balance of trade. The other associations participating on this panel will describe their own contributions. Let me spend a moment describing those of SAMA and AEA.

U.S. exports of the kinds of products manufactured and sold by SAMA and AEA member companies have continued to grow, an extension of an expansion that began in 1976. This has occurred despite a recession which adversely affected some of the basic U.S. industries at home and abroad during the last year.

For example, Table 1 shows a total of nearly $2.7 billion for exports of selected high technology products over the six-month period January through June 1980. This is an increase of more than 25 percent over the same period in 1979. While imports of similar products into the United States also enjoyed a healthy growth, the ratio of exports to imports remained at a high ratio of almost 3.5 to 1.

Despite a recent softening in international markets, SAMA and AEA are not coming before the Subcommittee with their hats in their hands. We expect to have continued success in our ability to compete abroad.

The degree of our success, however, will be highly dependent on actions that the Subcommittee takes in the coming months, as well as actions taken by other Committees in the Congress and the Executive Branch. It is in this context, Mr. Chairman, that SAMA and AEA believe your hearings are very timely. If SAMA and AEA member companies are to be as competitive in the future as they have been in the past, we believe this country must adopt a consistent overall policy which will:

1. Promote the twin principles of free and fair market access abroad, and
2. Build effective long range economic policies to stimulate and maintain U.S. technological leadership.

Given this framework, let me express SAMA and AEA's views on some of the specific needs which we believe must be addressed by the Congress and the Executive Branch.

POST-TOKYO ROUND ACTIVITIES

During the Tokyo Round of Multilateral Trade Negotiations, a landmark set of codes was developed to reduce nontariff barriers between signatory countries. The high technology electronics industries represented by SAMA and AEA have a strong interest in several of these codes, particularly the Customs Valuation, Government Procurement, and Standards Codes.

TABLE 1

U.S. TRADE PROFILE
SELECTED SCIENTIFIC, INDUSTRIAL, AND MEDICAL INSTRUMENTS, EQUIPMENT AND APPARATUS

January - June, 1980
(Thousands of $)

PRODUCT GROUP	EXPORTS	IMPORTS
Electronic Signal Measuring Instruments (SIC Code 3825)	$ 639,145	$ 194,442
Optical & Analytical Instruments (SIC Code 3832)	347,869	191,302
Engineering & Scientific Instruments (SIC Code 3811)	473,265	94,594
Process Control Instruments (SIC Code 3823)	334,589	72,335
Fluid Meters & Counting Devices (SIC Code 3824)	41,440	29,133
Measuring & Controlling Devices (SIC Code 3829)	418,237	56,003
X-Ray & Electromedical Equipment (SIC Code 3693)	408,922	144,280
TOTAL	$2,663,467	$ 782,089

Source: U.S. Department of Commerce

SAMA and AEA believe the Government Procurement Code should be extended to include additional foreign government activities such as the Post Telephone and Telegraph's which are presently closed to U.S. suppliers. In addition, it is essential that the Administration vigorously pursue implementation of all these codes. Without vigorous pursuit, many of our trading partners will be inclined to lapse into their more restrictive, traditional practices, with which they are more familiar and are, undoubtedly, more comfortable.

SAMA and AEA also believe the Congress should renew the Administration's residual tariff cutting authority which is scheduled to expire this month. This authority has been used most successfully to accelerate the staging of the Tokyo Round cuts in semiconductor duty rates. Under an agreement reached earlier this year, the present semiconductor duty rates of 5.6 and 10.1 percent for United States and Japan respectfully will be reduced to a common 4.2 percent in April 1982. This should stimulate the sale of U.S. semiconductor products in Japan. Given this extended authority, the Administration may be able to negotiate duty reductions on other high technology products with our trading partners.

EXPORT LEGISLATION PRESENTLY BEFORE THE CONGRESS

Two pieces of legislation of particular interest to U.S. high technology exporters are slowly, very slowly, wending their way through the Congress. I am referring to the Export Trading Company legislation which has passed the Senate twice and is still undergoing review in the House, and the amendments to the Foreign Corrupt Practices Act which only recently passed the Senate and is now in the House.

SAMA and AEA believe both pieces of legislation deserve prompt attention and speedy passage. The Export Trading Company legislation is of particular interest to the smaller high technology firms who are without extensive international operations since it will give them access to bank capital and permit them to operate in close association with other U.S. firms free of uncertain antitrust enforcement. The amendments to the Foreign Corrupt Practices Act will assist all U.S. exporters by eliminating ambiguities, by clarifying definitions, and by permitting a reduction in some of the expensive and time consuming record keeping requirements.

DOMESTIC INTERNATIONAL SALES CORPORATION (DISC)

It it the view of SAMA and AEA that the recent furor over whether or not our trading partners in the GATT would permit U.S. to retain DISC is another example of U.S. efforts to maintain smooth relations with other countries at the expense of our legitimate rights. Why should we give up DISC while other countries support their export industries to a much greater extent by rebating Value Added Taxes? Although it appears that the DISC controversy may be settled temporarily, it could easily arise again. For this reason SAMA and AEA wish to comment on the use these member firms make of DISC.

Within SAMA member companies for example, DISC is presently widely and successfully employed. Large, medium and small firms, those who manufacture only in this country and those with extensive sales and manufacturing activities abroad, have found that the DISC incentives have convinced their managements of the importance of exports, and have enabled them to compete abroad on more equal terms against tough, subsidized foreign competitors.

The experience of high technology companies as a whole clearly indicates that DISC has provided an important export stimulus.

For example, a small high technology firm in the Northeastern part of this country exports about 35 percent of its sales volume of about $14 million per year. In an area plagued with chronically high unemployment, this company's export business provides jobs to 100 of its 360 employees. Without DISC, given the added costs of international marketing, the firm believes much of its export activities would become unprofitable and thus be subject to discontinuance.

Another high technology firm in the Northeast, although larger but by no means a giant, feels the same way. Slightly more than 30 percent of this firm's annual sales of $70 million are exported. The employment of 400 persons in a workforce of about 1,500 is directly related to these export sales.

Yet another, even larger firm, though still not a giant, in that same region, has used the DISC tax provisions to increase its exports. The firm, now employs over 6,000 people in this country. Technical innovations and skilled craftsmanship have enabled it to become one of the world leaders in its field. Exports have played a large role in the company's business since 1920.

The following account, from that firm's management, summarizes the way in which our members view the benefits associated with DISC:

> " . . . During the 1960's the combination of dollar parities, foreign technical innovations, rising U.S. labor rates, and export incentives offered by certain foreign governments caused a serious leveling of our export business. In 1968, as a result of sales reductions and reduced earnings, this firm suffered our first major layoff.
>
> Then came legislation enabling the formation of DISC. It was found that the DISC benefits help to defray the increased costs associated with export business and allows users to maintain identical pricing in export and domestic transactions. The competitiveness of these prices has enabled the firm to expand exports very significantly, consequently increasing employment in the U.S. Management is convinced that if there has been no DISC, our U.S. employment today would be somewhere between 5 and 10 percent less than it is today. Tax relief, such as that provided by DISC, is important to the company and its employees, as well as to shareholders. Export business is very important - it increases our manufacturing base, improves overall production efficiency and, as a result, reduces the need for price increases. Without DISC, or some other form of export incentive, we would surely find it necessary to increase our export prices and as a result, see our export sales and local employment seriously reduced.
>
> We consider DISC a valuable export incentive, not a subsidy. More important, we consider it an export stimulant."

As an incentive, DISC has served to focus a great deal of attention upon the desirability of producing goods within the U.S. for foreign markets. This increased awareness has helped expand the level of exports in recent years. SAMA and AEA member firms believe DISC should be retained to promote exports and help U.S. employment. Our member firms believe elimination of DISC, at this time, would be equivalent to telling U.S. industry and U.S. workers that the U.S. government does not care about exports.

"Alternatives" to DISC

Having said this, let me make a few personal observations about some of the suggestions I have heard in the past few months about possible "GATT-safe" replacements should it eventually become necessary to modify or replace the DISC legislation. I am not a lawyer, let alone a tax lawyer, so I do not know if any of the proposals I have heard discussed by legal experts would actually pass muster in the GATT. However, as a businessman and one who established and operated Hewlett-Packard's Western Hemisphere Trade Corporation (WHTC) in the early 1960's, I'm deeply concerned about the operating difficulties which would be likely to occur if some of these monuments to legal ingenuity were enacted into law.

From an operating point of view, one of the benefits of a DISC is its invisibility so far as foreign purchasers and others in the distribution chain — banks, freight forwarders, insurance companies, air and ocean carriers, etc. — are concerned. In contrast, a WHTC [and by implication, a Foreign International Sales Corporation (FISC)] has high visibility which serves to confuse and alienate foreign customers and causes continual complications for others in the distribution chain. I vividly recall our difficulties in convincing our customers that orders and letters of credit had to be written in favor of Hewlett-Packard Inter-Americas (HPIA), our WHTC, and not the Hewlett-Packard Company with whom they were accustomed to deal. I also recall our continual problems in convincing people in the distribution chain that HPIA was a legitimate organization whose activities, billings, etc. must be kept separate from that of the parent. Interposing a separate corporate entity between the Hewlett-Packard Company and its customers in the Western Hemisphere was a costly and frustrating experience, and I am firmly convinced that we lost some customers, who, becoming disgusted, decided to do business with firms who were not so determined to make life complicated for them.

Another beauty of the DISC from an operating viewpoint is that substance is not required. In contrast, a WHTC (and again by implication, a FISC) requires substance. Some of this - providing separate stationery and forms, keeping a separate set of books, etc. - is simply a nuisance and an added expense. Others are more complicated; for example, transferring people into the WHTC while ensuring that all of their benefits continue unaffected. Still other substantive measures are simply counterproductive, and continually work to make life difficult for the exporter, his customers, and for people in the distribution chain. Foremost among these is the need to transfer title abroad. In our case, the gyrations that we put our customers through to ensure passage of title outside the United States worked to our disadvantage. I know that as a result, some of our customers became so irritated that they decided to place their orders on other suppliers not similarly encumbered.

I've raised these and similar operating problems in the DISC discussions. However, as might be expected, the legal experts tend to underestimate their importance. I have no doubt that large firms could modify their activities to operate a FISC, a modified WHTC, or some other legal creation - although I fear some customers would be lost. For the life of me, however, I cannot see how very many small - or even medium-sized firms, such as those represented by SAMA and AEA would be able to do this and, for that matter, would be inclined to do so after they had the opportunity to carefully review the requirements.

RESEARCH AND DEVELOPMENT

Mr. Chairman, the statistics on the deteriorating overall U.S. trade balance in recent years have made it obvious, painfully so to some, that we live in an interdependent world that is growing and advancing around us both economically and technologically. The realization of such a world is, in fact, an objective long sought by this nation.

SAMA and AEA believe substantial reductions in the amount of U.S. investment in research and development have been a prime cause of the deteriorating competitive position of U.S. business in world markets and the declining productivity of the U.S. workforce. U.S. expenditures for R&D since 1960 have declined in both real and relative terms. When measured as a percent of GNP, U.S. R&D expenditures dropped from a peak of 2.95 percent in 1964 to 2.22 percent in 1979, a decline of almost 25 percent (see Figure 1). A number of complex and inter-related factors can be seen as the causes for this decline, among them: the constantly increasing cost of money, the escalating size of investment required to reach meaningful results, the risk factors in our unstable economy, etc. These have reduced the ability of U.S. business to fund research and development activities to the level needed to maintain our competitive position relative to our trading partners.

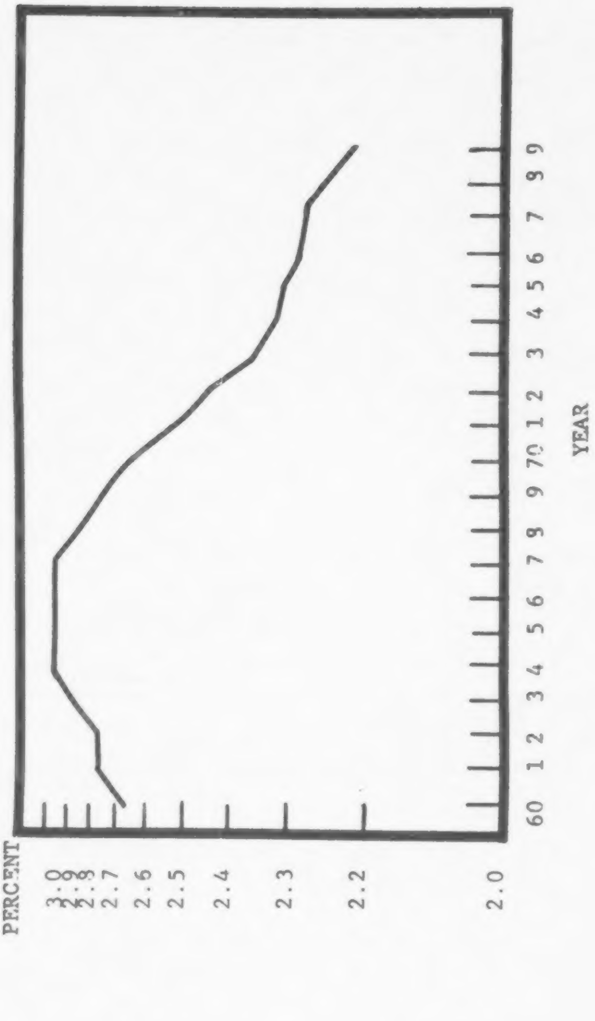
The need is to focus more of this nation's resources on R&D - the key which in the past has opened the door to the unparalled success of U.S. industries, at home and abroad. There is ample evidence of a significant positive correlation between an industry's commitment to R&D and its growth in both domestic and export markets. For example Figure 2 dramatically indicates that manufacturing industries classified as R&D intensive, have had a rapidly accelerating trade balance, while non-R&D intensive industries have produced an equally accelerating negative balance of trade.

To examine more closely the relationship of R&D to overall business operations, SAMA conducted a survey of its membership last year. The results are striking, but not surprising. As had been expected, SAMA's high technology member companies consider research and development to be the life-blood of their business.

According to SAMA's survey (Table 2), it's members on the average spend one and a half times as much on R&D as they do on new plants and equipment - a decided contrast to usual industry practice where capital expenditures constitute the major company investments. Some SAMA member companies spend seven to eight times more on R&D than on capital equipment - and this at a time when the industry's need for greater investment in plants and equipment is expanding dramatically.

FIGURE 1

RATIO OF NATIONAL R. & D.
EXPENDITURES TO GNP
1960-79

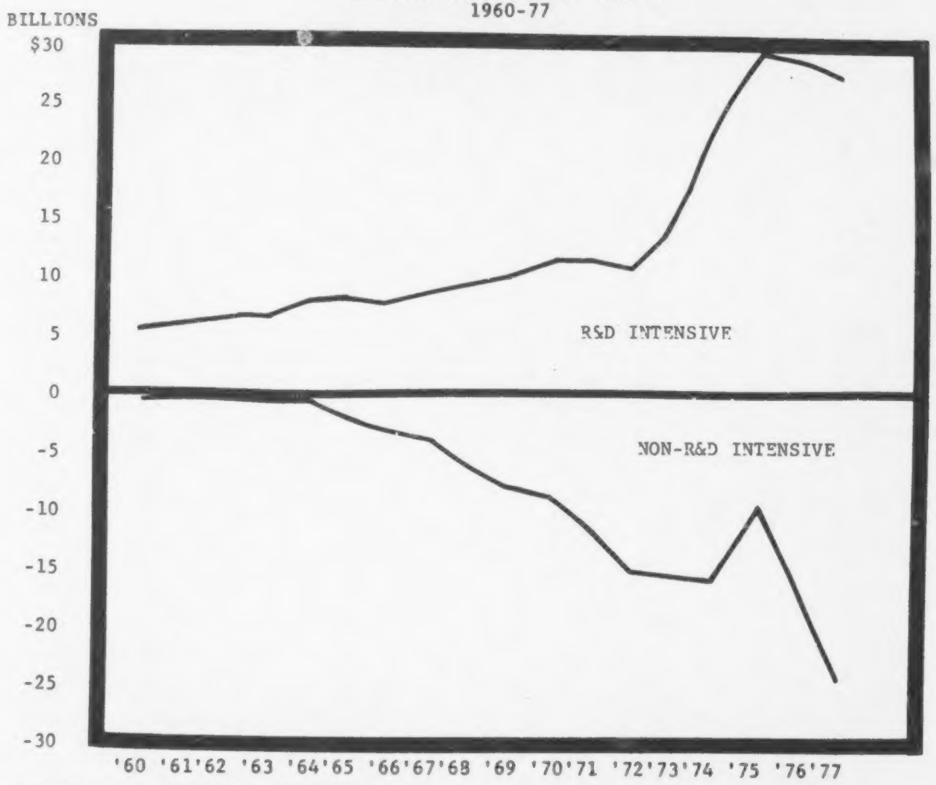


SOURCE: U.S. NATIONAL SCIENCE BOARD

FIGURE 2

U.S. TRADE BALANCE IN R.&D.-INTENSIVE AND NON-R.&D.-INTENSIVE

MANUFACTURED PRODUCT GROUPS
1960-77



SOURCE: U.S. NATIONAL SCIENCE BOARD

TABLE 2

R&D EXPENDITURES AS A PERCENTAGE OF CORPORATE SALES, PROFITS, CAPITAL SPENDING

SAMA MEMBER COMPANIES - 1979

PRODUCT GROUPS	TOTAL COMPANY SALES	AFTER TAX PROFITS	CAPITAL EXPENDITURES
Process Measurement & Control	4.5	157.1	222.5
Instrument Companies*	6.2	77.6	121.1
Laboratory Apparatus Companies**	6.1	51.4	122.6
Composite	5.6	86.9	150.9

* - Laboratory analytical, clinical and measurement and test instruments.

** - Manufacturers of laboratory equipment, reagent chemicals and sample handling.

Source: SAMA, Washington, DC

In terms of after tax profits, SAMA members spend an average of about 87 percent on R&D.

Of the total amount devoted to research and development by those surveyed - an annual average of greater than $5.5 million per company - 86 percent is devoted to applied product development and 14 percent to research,

SAMA and AEA have strongly supported a number of tax changes designed to stimulate research and development. Several of these measures were enacted by the Congress in the Economic Recovery Act of 1981. These include:

1. A 25 percent tax credit for increases in R&D spending over the average of the three previous years;
2. Inclusion in the tax credit of 65 percent of a corporation's research grants to universities;
3. Assignment, under the accelerated cost recovery provisions, of R&D equipment to the three year category, and
4. Permission, over a two-year period, for U.S. corporations to allocate all U.S. incurred R&D expenses to U.S. source income.

Valuable as these changes are, SAMA and AEA believe much of their impact will be lost unless the following additional actions are taken:

1. The definition of "Research" being developed by Treasury for the tax credit must be broad enough to encompass the needs of U.S. high technology companies;
2. The January 1, 1986 "sunset" for the R&D tax credit must be extended;
3. The tax credit for corporate donations to universities for research should not be limited by inclusion in the three year base period;
4. The cost of capital for U.S. exporters should be brought into line with that of their competitors in Japan and Germany where there is no tax on capital gains.

5. U.S. incurred R&D expenses should be made permanently deductible against U.S. source income.

MANPOWER

These changes in U.S. tax law, particularly those encouraging increased cooperation between U.S. high technology companies and universities throughout the country, will address but certainly not solve another pressing problem: the shortage of skilled manpower which is currently confronting the electronics industries.

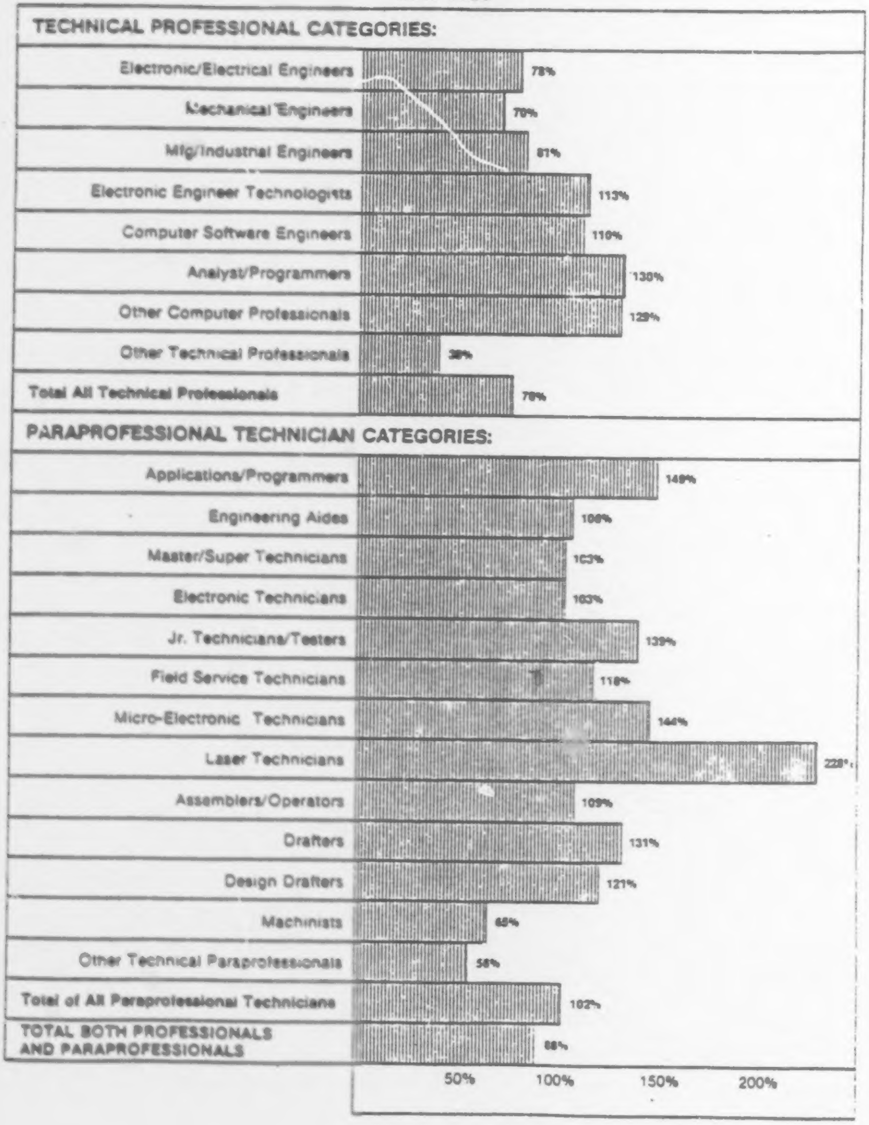
This past year, for example, AEA initiated a survey to gather nationwide statistics to determine the current extent of the manpower shortage plaguing the electronics industries, and to see what the status will be four years from now. As shown on the following chart, U.S. high technology firms will experience a dramatic increase in the need for technically qualified personnel through 1985.

Among the survey's findings:

- The continued healthy state of the computer and computer-related part of the industry will feel a greater need for computer specialists.
- The heightened demand for laser technicians indicates this part of the industry will begin to blossom more fully.
- The burgeoning semiconductor segment will need more micro-electronics technicians.
- The shortage of technically trained personnel is real and its magnitude significant: Of the 1,265 AEA member and non-members surveyed, 48 percent reported a need for 55,000 new electronic engineers and computer science engineers, 16,000 electronic technicians, and 66,000 assemblers through 1985.

The shortage of skilled manpower is a multi-faceted problem that does not lend itself to a single legislative solution. We believe solving it will require action by individual companies, state and local governments, the electornics industry at large as well as by the Federal government. As I have said, a number of improvements in federal law have already been made. These however are not enough and the high technology electronics industry, through its trade associations, expects to be proposing additional steps in the coming months.

UNITED STATES: AEA DATA ONLY
Projected Growth as Percentage of Total
1981-1985



U.S. EXPORT DISINCENTIVES: EXPORT CONTROLS

Perhaps the major export disincentive confronting SAMA and AEA member companies is the administration and implementation of U.S. export control policy.

Export controls, although necessary for our national security, economic well-being, and as an expression of our foreign policy, often discourage U.S. businessmen and place them at a competitive disadvantage. SAMA and AEA believe there are several specific areas that need attention. In describing these areas SAMA and AEA have tried to make constructive suggestions which could lead to their reduction or elimination. We believe reduction or elimination is essential, particularly at this time when our country so desperately needs an improved trade balance.

Export Licensing to Friendly Countries

Well over half of the estimated 85,000 export license applications received by the U.S. Commerce Department this past year were for transactions with our COCOM partners and Australia and New Zealand. These transactions are almost invariably approved in a short period of time. This being the case, U.S. businessmen question the need for licensing shipments to these countries.

For years the United States and Canada have had a special relationship whereby validated licenses are not required to export U.S. commodities which are to be consumed in Canada. This arrangement has worked well, and it would seem that it could be selectively extended to some or all of our COCOM partners and possibly to Australia and New Zealand. Extension of the U.S./Canadian relationship would save U.S. exporters the time and expense presently required to prepare many license applications. It would also enable U.S. licensing officers to devote a higher proportion of their attention to truly important cases in more critical areas of the world.

Export Licensing of Products Containing Microprocessors

The decision as to whether or not a product is subject to individually validated U.S. export licensing has historically been based on the characteristics of the product and not upon the characteristics of the parts which it contains. For example, microprocessors are licensable if supplied as individual semiconductor components. However, automobiles, washing machines, and a host of other basically nonelectronic products containing microprocessors are not considered licensable. The rationale is that no one is likely to purchase and disassemble an expensive product merely to obtain a microprocessor whose value is only a few dollars.

The U.S. government, however, has been unwilling to extend this rationale to electronic instruments such as those manufactured by SAMA and AEA members. At this time, the U.S. licensing authorities consider an electronic instrument, which would not otherwise be licensable, to be licensable if it contains a microprocessor.

SAMA and AEA member companies are using microprocessors in constantly increasing numbers to increase the utilitiy, versatility and reliability of the instruments and other products they manufacture. This has meant a corresponding increase in the number of export license applications, a costly and time consuming activity. SAMA and AEA believe it is high time for the U.S. government to follow the policies of many other Western governments and drop the requirement for export licensing of electronic instruments containing microprocessors so long as the instruments are not otherwise licensable and the microprocessors are used to facilitate data acquisition or other operational features and cannot be reprogrammed for other use.

Unilateral Export Controls

U.S. businessmen are concerned that the tense international situation, vis-a-vis the Soviet Union, and the growing concern in the Department of Defense over transfers of technology may lead to the imposition of a number of unilateral licensing controls. Presumably, the rationale behind extending U.S. unilateral controls would be: (1) to prevent the utilization of certain products and technologies to support the military-industrial base of the Soviet Union, (2) the need to send the Soviets additional "signals" of U.S. displeasure, and (3) the belief that extending unilateral controls would induce the members of COCOM, and perhaps other Western countries, to adopt similar measures.

U.S. businessmen believe unilateral controls should be employed very sparingly and only where it can be reasonably determined such controls will have a direct measurable effect on the target country(ies). This is because there is ample evidence that the effect of unilateral controls extends far beyond the specific situations they are supposed to influence. For example:

1. Most products and technologies not presently subject to COCOM controls are readily available from any number of non-U.S. sources. If it is unlikely that these countries will follow the U.S. lead and adopt similar controls, the net effect of the unilateral U.S. export control measures will not be to deprive the Soviets, but rather to channel this and inevitably other business to all too eager non-U.S. suppliers. This will further separate U.S. businessmen from the Soviet market, and further diminish trade contacts which, as a form of communications, may be of some help in perserving peace.

2. Many purchasers located in friendly countries abroad have thriving export businesses in which U.S. products play an important part, either as parts and components or as supporting equipment. In recent years, a number of these purchasers have become increasingly concerned at what they perceive to be the never-ending vagaries of U.S. controls—South Africa, Rhodesia, Uganda, human rights, nuclear proliferation, Iran, etc. Many are seriously considering reducing their dependence on U.S. suppliers, not because they believe U.S. controls will be extended over U.S. products they consume locally, but rather because they fear the inevitable U.S. wish to extend controls extraterritorially over re-exports which might place their export business in jeopardy.

3. An increase in controls means more work for exporters in preparing applications and for U.S. licensing officials in handling them. The resultant decrease in the efficiency of the licensing process inevitably spreads out over all transactions requiring validated approval. The licensing delays, in turn, tend to divert more business to our competitors abroad, who, not facing similar licensing requirements, can accept orders unequivocally and ship as soon as the material is ready.

4. Past history amply demonstrates that once imposed controls seem to enjoy a life of their own and are very difficult to terminate. This means that U.S. business is likely to bear the burden of increased paperwork, delays, and loss of business long after conditions have changed and the reason for instituting controls has gone.

Unilateral Re-Export Controls

The United States, alone among its friends and allies, attempts to control their re-exports of U.S. origin commodities. The unilateral controls, not impossed by any other country, hamper the ability of U.S. firms to sell their products abroad. Our COCOM partners in particular find the extra-territorial reach of the U.S. re-export controls unnecessary, discriminatory, and inconsistent in view of their expressed agreement to support the COCOM control system.

Compliance with U.S. unilateral re-export requirements is spotty — foreign firms frequently ignore them. In fact, U.S. firms and international subsidiaries seem to be the major source of re-export applications. SAMA and AEA believe steps should be taken to relax these controls, especially with respect to those COCOM countries cooperating most closely with the United States in supporting a uniform system of export controls.

Export Licensing Delays

U.S. businessmen find that long U.S. licensing delays inhibit normal customer relations, tie up expensive inventories, and, ultimately, divert business permanently to foreign competitors who are not so encumbered.

Time delays, serious in any transaction, are especially serious in dealing with the Communist countries where U.S. suppliers already face several built-in disadvantages. Some of the disadvantages are: lack of familiarity with the market; the relative lack of hard currency; remoteness, and thus the fact that long shipping intervals are required; and the unwillingness or inability of U.S. firms to accept merchandise from the Communist countries in payment for U.S. goods.

SAMA and AEA are very pleased that the current administration has recognized the need for more rapid decisions and within recent months has reduced the licensing backlog from over 2,000 cases to a handful of 30 or so. The effort required on the part of all in the licensing chain to achieve this reduction should be continued to prevent the backlog from building up again and so that even more rapid responses, better than the present Congressionally mandated time-lines can be attained and sustained.

In this connection, SAMA and AEA believe careful attention should be given to various institutional factors which, singly and in combination, lead to licensing delays. Some of these are:

1. Lack of affirmative policy direction at the highest government levels to coordinate the disparate views and opinions held by the various agencies participating in the export control process.

2. Inadequate reductions in the scope of controls despite the fact that Western availability of similar products and, for that matter, availability within the Communist countries themselves has changed substantially in recent years.

3. Laborious case-by-case licensing procedures applied to repetitive transactions and the lack of significant additional licensing delegations from other agencies to permit the Department of Commerce to process license applications more quickly.

4. Constant increases in the number and difficulty of new applications as U.S. business volume with the Communist countries expands, and as various products, especially computer systems, increase in complexity.

5. Inability of the licensing agencies, particularly the Department of Commerce, to obtain adequate funding to add qualified licensing personnel required to reduce delays.

6. Personnel cuts in the licensing agencies, especially the Department of Commerce, along with increased workloads such as those occasioned by the administration of the antiboycott provisions of the Export Administration Act.

7. Archaic paperwork procedures and slow, manual data retrieval processes which waste the time of skilled licensing officers who would be better employed analyzing applications and speeding them through the licensing process.

Investment Barriers

In a growing number of newly industrialized and developing countries, a subtle form of discrimination has evolved that effectively bars U.S. companies from fully participating in important markets. These are a variety of governmental policies, formal and informal, that have been adopted to restrict foreign direct investment. They include a wide variety of restrictions such as local equity requirements, technology transfer considerations, domestic content regulations, export quotas, etc. In some cases, these limitations take the form of distinct governmental laws and regulations. In many other cases, however, they are unwritten and subject to the whims of political expediency. In any event, these investment restrictions have an adverse effect on the restricting countries. Since very few U.S. firms are willing to operate under such restrictions, the economies of these nations are damaged by being deprived of the products and the technologies they need.

Investment abroad in marketing and service activities is a vital part of an aggressive export marketing program for U.S. companies. Many U.S. high technology equipment firms also have limited manufacturing acitivities abroad. Traditionally these activities were undertaken largely to get under various foreign tariff barriers and to enjoy lower labor costs. These advantages plus reduced shipping costs have permitted U.S. firms manufacturing abroad to compete on more equal terms with local manufacturers. Production abroad by U.S. high technology electronic equipment firms has almost always been undertaken for local consumption, rather than for export to the United States.

These manufacturing activities do not reduce U.S. employment since most of these products face stiff competition and cannot be sold abroad if the United States is the source of supply. In some areas, such as telecommunications, foreign government ownership and restrictive procurement practices made local manufacturing the only way in which U.S. firms could sell equipment. U.S. employment has also been helped by the fact that many of the components used by U.S. equipment firms manufacturing abroad were (and are) provided by U.S. suppliers. In addition, the U.S. balance of payments was (and is) aided by dividend and royalty payments supplied by U.S. manufacturing activities abroad.

Examples of Foreign Investment Barriers

Let me cite some examples of the kinds of investment restrictions U.S. high technology electronics firms presently face in some of the newly industrialized countries and in various developing countries:

1. In Mexico, a U.S. company may own only 49% of any manufacturing sales, service or assembly subsidiary. There are also extensive Mexican import quotas and import licensing requirements.

2. In Brazil, products produced in Brazil must have at least 35% local content for a firm to qualify as a local manufacturer. There are also severe Brazilian import taxes and import licensing requirements.

3. In Malaysia, a company may enjoy majority ownership of an operation only if it agrees not to sell any products in Malaysia itself.

4. In the Phillipines, foreign controlled firms manufacturing in the country cannot sell directly to local customers. They may not import at all.

5. The Andean Pact countries (Venezuela, Bolivia, Columbia, Ecquador and Peru) have adopted guidelines calling for the phasing out of foreign majority ownership and the imposition of other restrictions on foreign investment.

By way of contrast, with a few very minor exeptions the United States gives free and open access to foreign investors. We believe investment, like trade, should be free between nations and U.S. policy should support those U.S. firms that are interested in establishing investments in other countries.

If other countries are unwilling to open-up their investment policies, we feel that the U.S. government should review this country's traditional policy towards foreign investment in the U.S. There must be a realization of the vital relationship between trade and investment and the enormous economic benefits that these activities provide. The policy of this country is to support free and open trade and investment flows. What we need now is to be more aggressive in persuading other countries to adopt similar policies.

CONCLUSION

In conclusion, Mr. Chairman, I believe that it is worth looking toward the future. Some trends are evident:

1. Competition from abroad, growing stronger daily, will increase dramatically as more countries realize the importance of having a domestic high technology electronics industry.

2. Greater attention will be paid to innovation and productivity. As a result, the need for highly skilled R&D personnel will continue to increase.

3. Capital equipment needs will continue to grow, particularly in the semiconductor areas as techniques become more sophisticated and as the obsolescence rate of current equipment increases. Nations where capital is available at reasonable cost will reap a greater advantage in leading edge, high technology products.

4. Semiconductor devices will become less costly per function as more and more functions are built in. Equipment manufacturers using these more complex devices will see their direct labor costs reduced and the reliability of their products improved.

5. Greater attention will be given to developing products which other industries can use to increase their productivity. For example, mechanical control devices in manufacturing operations, consumer products, etc. will be rapidly replaced by electronic products capable of performing many more operations with greater precision. As a result, R&D and engineering personnel of many high technology firms will have to work much more closely with other manufacturers and the end users than has been the case in the past.

6. The complexity of products will increase dramatically as increased use is made of sophisticated semiconductor devices and computer technology. At the same time, there will be increased demand for reliability, and the pressure to develop software will mount.

Others on the panel will discuss a number of long-term negotiating objectives for the U.S. government to establish with respect to future dealings with our trading partners. What I have attempted to do is focus on several areas in which SAMA and AEA believe that you as members of the Congress can assist U.S. high technology firms in their continuing efforts to innovate, to increase their productivity, and to best foreign competition.

Chairman GIBBONS. Thank you, Mr. Christiansen.

Let me inquire of our fellow panel members. We passed the second bell. Do members want to recess at this time? What is your wish?

Mr. FRENZEL. I don't think we have time to hear another witness.

Chairman GIBBONS. Could we just ask your indulgence in that we have to go over and vote. We will be right back.

[Recess.]

Chairman GIBBONS. All right, we will resume now.

Our next witness is Mr. Alex Lidow.

STATEMEMT OF ALEX LIDOW, VICE PRESIDENT, RESEARCH AND DEVELOPMENT, INTERNATIONAL RECTIFIER CORP., ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

Mr. LIDOW. Good morning, Mr. Chairman. My name is Alexander Lidow. I have a Ph. D. in applied physics and am vice president of research and development for International Rectifier Corp.

International Rectifier is a manufacturer of semiconductor components with manufacturing facilities in England and Italy and a 25-year-old joint venture in Japan.

I am here representing the Semiconductor Industry Association. First, I would like to state that I thoroughly endorse many of the recommendations of the two other industry witnesses here today, Mr. Christiansen and Mr. McCloskey.

They represent almost all of my company's customers and certainly the customers of all the other companies in my organization.

I would just like to point out that the semiconductor industry shipments last year totaled $16.1 billion and will grow to $55 billion in the next 10 years. The United States enjoys 63 percent of that world market currently, and the Japanese at this moment hold about 19 percent of that world market.

However, there are four facts which accurately describe today's worldwide competitive environment in semiconductors, particularly with regard to the United States and Japan.

First, the U.S. market is open to foreign sales and investment, representing 49 percent of world consumption.

Second, the Japanese semiconductor market is not open to competition on the basis of price and quality.

Third, Japan and the United States have equal access to European and Third World semiconductor markets. That is not to say the other markets are opened or closed. It is just to say that they are no more open nor closed to the United States than they are to Japan.

The last fact that completes this picture is that the Japanese semiconductor market represents 19 percent of the world market and is growing at a faster rate than the U.S. market.

Therefore, we can anticipate a greater and greater percentage of the world market being in Japan behind those closed doors.

If we maintain the status quo, the Japanese semiconductor manufacturers will maintain access to 100 percent of the world market while the U.S. manufacturers have access to only 81 percent of the world market. And that percentage is shrinking. What that means is that the United States is relegated to a smaller volume of products than Japan is.

In the semiconductor industry, there is a tremendous economy of volume in production. As a matter of fact, every time you double your production of a component, you reduce the costs by about 25 percent.

What this says is that the Japanese, in very high-volume products in a mature market, realize a fundamental advantage due to a protected home base to which they can ship their products.

In other words, they have a 20-percent advantage in volume right off the bat, which is growing every day. This has already been hit home to us in certain very, very high-technology, high-volume, mass-produced sort of products like dynamic random access memories, which are the fundamental component for today's and tomorrow's computers.

The Japanese have waged a very, very aggressive campaign to actually cover a large portion of that market, and therefore realize this tremendous volume advantage, where the United States cannot have the same volume advantage because they can't ship any components, any memory components into Japan at this point.

The SIA believes that there is a positive approach to resolving this conflict. And that is not one of less competition, it is not one of closing our doors to this influx of Japanese components, but rather it is one that is based on the idea of opening our markets and opening up competition as much as possible.

What we propose as a way to implement this idea of a free and open worldwide market is, first of all, to carry on with the wonderful work that was done by the Congress and Ambassador Brock in reducing the tariffs between the United States and Japan to a common 4.2 percent in 1982.

We would like to have this countdown to zero, thus eliminating any residual barriers that might protect a home producer of semiconductors.

In other words, we are saying in the United States, we don't even want a 4.2-percent barrier protecting us from Japan.

But we also don't think Japan should have a 4.2-percent barrier protecting them from us. This would eliminate, also, any official monetary barrier to free trade, therefore stripping Japan from any of the excuses that might be used to say that a market is not open.

The implementation of this could be done via the passage of the Frenzel-Jones-Gibbons bill that is currently in front of you that would enable the President to have authority to—tariff authority to cut tariffs further.

However, we recommend slightly more than that. We contend that, judging from the history of our relations with Japan, a mere reduction of the tariffs would be totally ineffective in improving the openness of the Japanese market.

We, therefore, ask that the Congress give Ambassador Brock and Secretary Baldrige a mandate to demand a pledge from the Japanese Government to open their doors to U.S. semiconductors.

That would mean that we are not looking for any kind of agreement, what we are looking for is a real improvement in the trade between the United States and Japan in semiconductors.

We want a real improvement in the amount of our market share in Japan, a real improvement in their accepting our products, and this can only be done, we believe, by closely monitoring the situation, something which we propose to set up and have a very high-level monitoring system that is constantly reviewed to see the progress of such openness.

I would like to point out that the semiconductor industry is not alone in this proposal. The United States-Japan joint economic group, or Wiseman group, is proposing the same thing. We heartily support implementation of all aspects of their recommendations within your jurisdiction.

And I believe semiconductors are within the jurisdiction of this committee to implement. One thing that cannot be ignored in this opening of the Japanese market is the openness to investment.

International Rectifiers has had a joint venture in Japan since 1956. However, we have been prevented from participating with that joint venture in that joint venture's management, in the joint venture's market.

We believe that these have been the tradeoffs that we have had to accept in order to even have the joint venture. This is not an acceptable approach to investment in Japan.

We and Texas Instruments are the only semiconductor companies that currently have ventures in Japan. I think this is an example of national treatment preventing a widespread influx of U.S. investment in Japan, which is actually necessary in order to effectively address the home markets.

So, in conclusion, what we are saying is we don't want protection. We are a healthy industry. We are extremely innovative and we still have a technological edge over Japan.

What we want is to have open competition. We don't want to be like the fighter that goes into the ring with two hands tied behind his back. We are healthy. We want our hands untied. We want the Japanese market to be as open as ours is, in fact. We want to monitor it to make sure that it does open.

We will accept nothing less than complete openness and we will also accept nothing less than openness, not just for sales of our semiconductors, but for local investments.

I would also like to add in conclusion that we also very much support any efforts that you gentlemen will make in any incentives toward research and development. Our industry is extremely sensitive to such incentives.

The recent R. & D. incremental taxes have been very, very helpful to our industry and we appreciate it very much.

At this point, I would like to thank you for your attention.

[The prepared statement follows:]

STATEMENT OF DR. ALEXANDER LIDOW, VICE PRESIDENT, RESEARCH AND DEVELOPMENT, INTERNATIONAL RECTIFIER CORP., ON BEHALF OF THE SEMICONDUCTOR INDUSTRY ASSOCIATION

INTRODUCTION

Good morning, Mr. Chairman. My name is Alexander Lidow, I have a Ph. D. in Applied Physics and am Vice President of Research and Development for International Rectifier Corp. International Rectifier is a manufacturer of semiconductor components with manufacturing facilities in California, England, and Italy and a

25-year old affiliate company in Japan. I am here representing the Semiconductor Industry Association.

First, I would like to state that I thoroughly endorse many of the recommendations of the two other industry witnesses here today, Mr. Christiansen and Mr. McCloskey.

During the last decade, it has become evident that the manufacturing of high technology semiconductors is necessary not only for the growth of the computer industry, the telecommunications industry, and the electronics instrumentation industry, but is also essential to the revitalization of such mature industries as the automotive, steel, and textile industries. The semiconductor industry is also vital for the future development of such new fields as genetic engineering and robotics and is irreplaceable as a means of maintaining our long-term national security.

INTERNATIONAL TRADE

Status of world competition

Worldwide shipments of semiconductors totalled $16.1 billion in 1980 and are projected to grow to $55 billion by 1990. The two main producers of advanced semiconductor components today are the United States and Japan. The U.S. industry holds a worldwide 63 percent market share, but less than 13 percent of the Japanese market. The Japanese industry holds 42 percent of the 16K dynamic RAM (random access memory) market and over 70 percent of the 64K dynamic RAM market. These large memory circuits are the "flagships" of semiconductor technology. Moreover, because they are growing at over three times the rate of all semiconductors, sustained leadership in these commodity products will mean long term market leadership.

There are four facts which accurately describe today's worldwide competitive environment in semiconductors particularly with regard to the United States and Japan.

(1) The U.S. market is open to foreign sales and investment, representing 49 percent of world consumption.

(2) The Japanese semiconductor market is not open to competition on the basis of price and quality.

(3) Japan and the U.S. have equal access to European and third world semiconductor markets, 23 percent and 8 percent of world consumption, respectively.

(4) The Japanese semiconductor market represents 19 percent of the world market and is growing at a faster rate than the U.S. market.

Trends without policy change

If we maintain the status quo, the Japanese semiconductor manufacturers will maintain access to 100 percent of the world market while the U.S. manufacturers have access to only 81 percent of the world market, because the Japanese 19 percent share is closed to the United States.

In the manufacturing of semiconductors there is a tremendous economy of scale. It is estimated that for every doubling of production volume there is a corresponding reduction in component cost of 25 percent. This means that, by delivering from a protected home market, the Japanese can achieve a cost advantage as they acquire significant market shares in the United States and in other foreign markets. This cost advantage becomes ever more important over time as the industry matures and the development of next-generation products is dependent upon the cash generated by sales of previous generation products. This translates into an artificially derived competitive advantage to Japanese manufactures who will parlay this into a substantial edge in computers, telecommunications, consumer products and a myriad of other high technology fields and eventually threaten the continued healthy existence of these important U.S. industries.

The positive approach to conflict resolution

The SIA believes that the U.S. Government should anticipate this situation by aggressively pressing for measures to open the Japanese market.

The obvious place to begin in ensuring access to Japan is to eliminate the Japanese tariff on semiconductors. By agreement reached earlier this year, the Japanese—along with the United States—tariff is scheduled to be reduced to 4.2 percent in 1982. This agreement which was a major negotiating accomplishment with strong Congressional backing was essential to the achievement of parity between the United States and Japan, but it did not eliminate the advantage that Japanese domestic companies enjoy over imported products in Japan and the advantage that American domestic companies enjoy over imported products in the United States. Further, the agreement was not accompanied by a change in Japanese policy encouraging (rather than discouraging) imports of competitive semiconductor products nor did the agreement deal with the problems of investments into Japan by U.S. semiconductor companies and reciprocal treatment of Japanese investments in the United States.

We are not seeking unilateral actions by the Japanese. The United States should be prepared to do two things, only one of which will require legislative action. First, the United States will maintain its policy of keeping the U.S. market open to Japanese high technology products. As the Japanese have proven in other products and increasingly in semiconductors, the openness of the U.S. market to Japanese exports is a major economic benefit to Japan and a singular source of Japan's prospects for future economic growth.

The second step the United States should take is the elimination of the U.S. tariff. Mutual elimination of semiconductor tariffs between the United States and Japan would be a significant benefit to Japanese companies, both those that export to the United States and those that purchase U.S. semiconductors. The U.S. semiconductor industry is prepared to make this concession because nothing short of complete access to the Japanese market will allow U.S. companies to survive.

Legislation has already been introduced by members of this Committee to meet this objective. Congressmen Gibbons, Frenzel, and Jones introduced H.R. 4346 to authorize the President to use his authority under section 102 of the Trade Act of 1974 to conclude an agreement eliminating tariffs of semiconductors as previously recommended in the 1981 report of the Japan-U.S. Economic Relations Groups ("Wisemen"). We strongly support this legislative mandate for semiconductor tariff elimination and urge this Committee to give it immediate consideration and passage. Further, we urge the Congress to give Ambassador Brock as strong a mandate as possible to pursue this agreement with Japan.

In this regard, we should note that the President's modest tariff negotiating authority under section 124 of the Trade Act of 1974 expires in 2 weeks. This authority was used to great advantage for semiconductor trade in an agreement with Japan this spring. The extension of this authority is extremely important if our negotiators are to have the ability to deal with problems requiring negotiated solutions in the coming years. We strongly urge that Bill Brock and the President be granted this authority promptly.

An agreement to eliminate the tariff on semiconductors in Japan will not in itself result in an increase in sales of U.S. semiconductors to Japanese companies. Tariff elimination must be accompanied by a public pledge by the Japanese Government to encourage the opening of the Japanese market to foreign imports in fact. This means overcoming the pervasive attitude of Japanese businessmen that it is disloyal to purchase competitive foreign goods.

As a complement to the elimination of structural barriers to trade, the elimination of investment restrictions must also be pursued. A considerable increase in direct invesments by Japanese semiconductor manufacturers in the United States is taking place, concurrent with many investment projects by U.S. semiconductor producers in Japan. This activity tends to facilitate market development and to lessen trade frictions between the two countries. To complement the drive to eliminate tariffs and encourage the flow of imports into both nations, we also propose negotiations between the United States and Japan to assure national treatment is afforded these investments in both countries.[1] National treatment will include, on the basis of mutuality, access to government procurement, joint research, access to local financing on equal terms, equal applicability of tax incentives, and nondiscrimination in the application of all other governmental regulations.

Unless we go beyond the elimination of specific barriers to trade and investment in Japan, we will not be successful in opening the market. A process of regular reviews by senior officials of both governments should be implemented to determine whether the general agreement to open the Japanese semiconductor market is reflected in increased sales of U.S. semiconductor products and increased investment by U.S. semiconductor companies in Japan. Given the competitive drive of the U.S. industry, we are prepared to pursue a level of sales and investments in Japan that is comparable to that we enjoy elsewhere in the world. Japan has a rapidly expanding market that has grown at an over 20 percent compounded annual rate over the last decade. Our proposal is to simply allow U.S. producers to partake in the share of these growing applications which free market forces would confer. The end product of this scenario would be a greater degree of worldwide competition in semiconductors, which would encourage innovation and investment.

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[1] This proposal was included in the Wisemen's Report, excerpts from which appear in the appendix to this testimony.

A failure in our efforts to open Japanese semiconductor markets to U.S. sales and investment would eventually put an increased burden on America's oversized trade surplus with Japan projected for 1982 to be between $15 and $20 billion. Elimination of the structural barriers in Japan to trade and investment in semiconductors would be a positive step toward defusing the political crisis that is being caused by this growing Japanese trade surplus. As U.S. officials advised the Japanese Government last week, unless meaningful steps along these lines are taken, the pressure for a political solution involving restrictions on Japanese exports to the United States will become irresistable. The SIA deplores such self-defeating measures because they would lessen competition in the United States to the detriment of the U.S. industries that depend upon semiconductor technology and, if imitated by our trading partners, would cut off the U.S. industry from its customer base in the world market.

DOMESTIC POLICY

Japan's industry policy challenge

In addition to the problem of Japan market access, the American semiconductor industry must also address domestic policy issues in the context of Government-administration industrial policy in Japan to accelerate indigenous semiconductor development.

The Japan development program combines a series of joint research programs with accelerated depreciation and low interest, debt leveraged financing to enable the leading Japanese companies to achieve state-of-the-art manufacturing capability and sufficient capacity to satisfy domestic demand plus an increasing share of the world market.

American industry direct response

The American companies to the maximum extent possible will meet this Japanese Government-industry challenge head-on. The companies are investing in research and plant and equipment at a rate averaging 28 percent of sales, three and a half times the average rate of all U.S. manufacturers. Maintaining this intensity of investment is greatly facilitated by the incremental R. & D. tax credit contained in the Economic Recovery Tax Act of 1981, which the House Ways and Means Committee was instrumental in enacting.

The companies are continuing to maintain innovation leadership across the entire spectrum of semiconductor products, yielding no ground to foreign competition. The American semiconductor industry is planning to embark upon an unprecedented cooperative research program to tackle the long range science-related projects needed to produce the advanced integrated circuits of the future. This effort, utilizing university laboratories and microelectronic centers throughout the nation, will be largely industry-directed and industry-financed.

Facilitative changes to tax and competition policy

To facilitate continuation of these extraordinary efforts by the American semiconductor industry, we echo the recommendations of our fellow panel members that the tax credit for corporate contributions to unversity research be separated from the existing R. & D. credit and be granted on an absolute rather than incremental basis. We also propose that deductions for corporate contributions of equipment to universities be extended to include business assets, that is, equipment used in operations, rather than inventory and that such deductions be based on resale value rather than on a historical basis.

CONCLUSION

In an effort to maintain its long term vitality and competitiveness, the Semiconductor Industry Association has presented its recommendations to open the Japanese market to U.S. sales of semiconductors and obtain national treatment for U.S. investments. These recommendations echo those of the United States-Japan "Wisemen" group and we hope to work closely with the administration and the Congress to obtain the legislative authority needed to implement them. Coupled with a commitment from Japan to open its market, these measures will be a major step in establishing a mutually acceptable, long term trade relationship. We have also discussed the need for more efficient innovation through the increased use of joint research and development and more favorable tax treatment for industry donations to university research efforts.

We stand ready, as an industry, to do our part to take advantage of these measures by aggressively pursuing markets and investments. We look forward to reviewing with you the positive results of these efforts to encourage the U.S. high technology sector.

APPENDIX

The Japan-United States Economic Relations Group

Supplemental Report of the Japan-United States Economic Relations Group

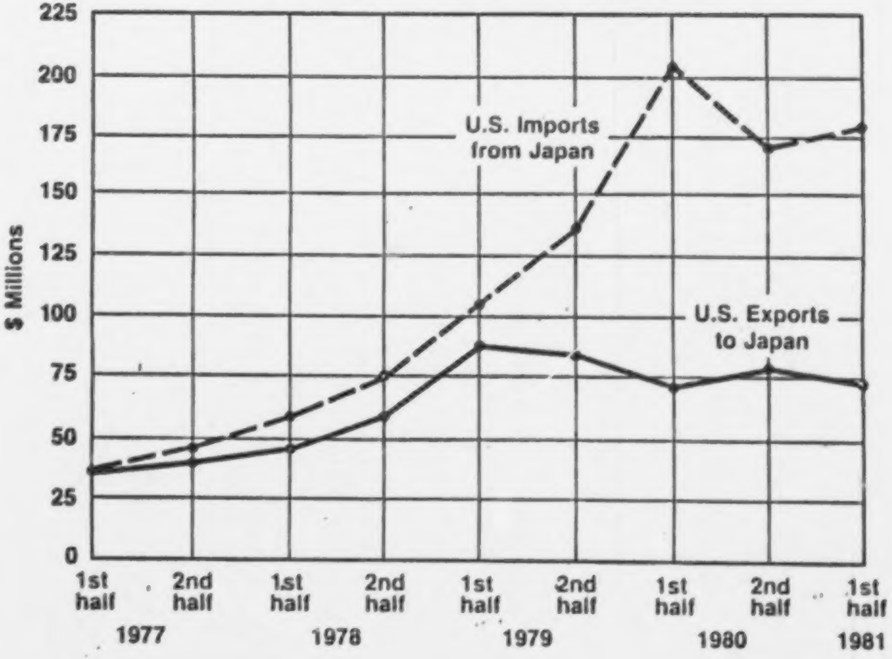
October 1981

In contrast, the agreement to accelerate tariff reductions on semiconductor products provides an example of constructive Japanese-U.S. action that will strengthen the international trading system as well as the industries of both countries. In our January Report, we recommended that the tariff cuts agreed in the MTN to be phased in over an eight year period should be accelerated to arrive promptly at an average 4.2% level on both sides, and thereafter the two countries should work as quickly as possible to eliminate tariffs. Since then, the two governments have agreed in principle to arrive at the 4.2% level next year.

Since Japan currently has a higher average level of tariffs on semiconductor products, Japanese producers will lose a margin of protection they would have received under the slower staging of tariff reductions. This can be justified in terms of Japan's strong industry, and it is the kind of step Japan should take to fulfill its role as a leader of an open trade system.

We believe that the reduction of trade barriers between Japan and the United States in semi-conductors, if combined with investments in each other's industry and access to government research and development and procurement programs on the basis of equal national treatment, will help strengthen both the American and Japanese semi-conductor industries and help consumers.

U.S./JAPAN TRADE BALANCE
(Total Semiconductors)

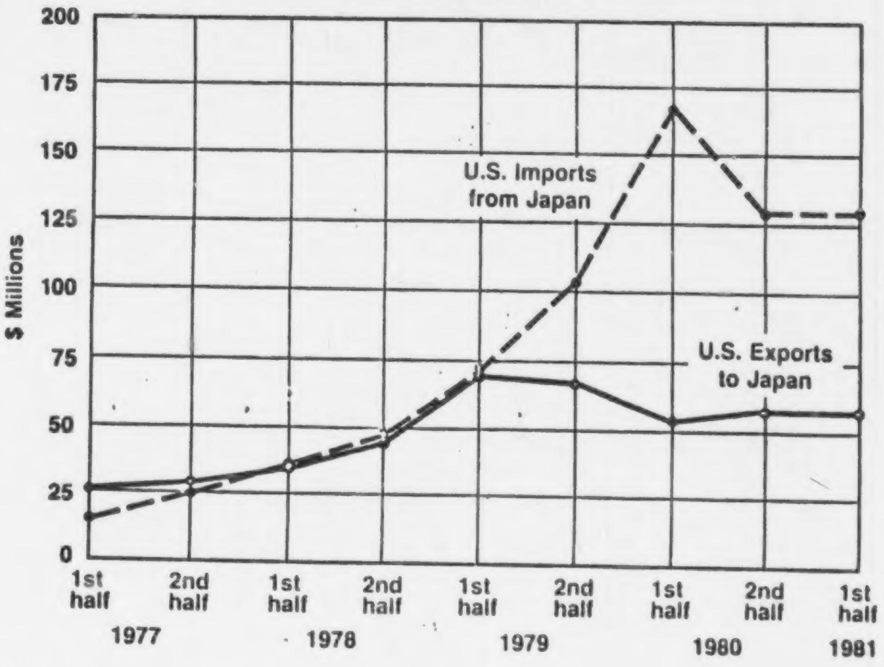


Data: U.S. Dept. of Commerce

Sept 1981

061COR-527C

U.S./JAPAN TRADE BALANCE
(Total I.C.)

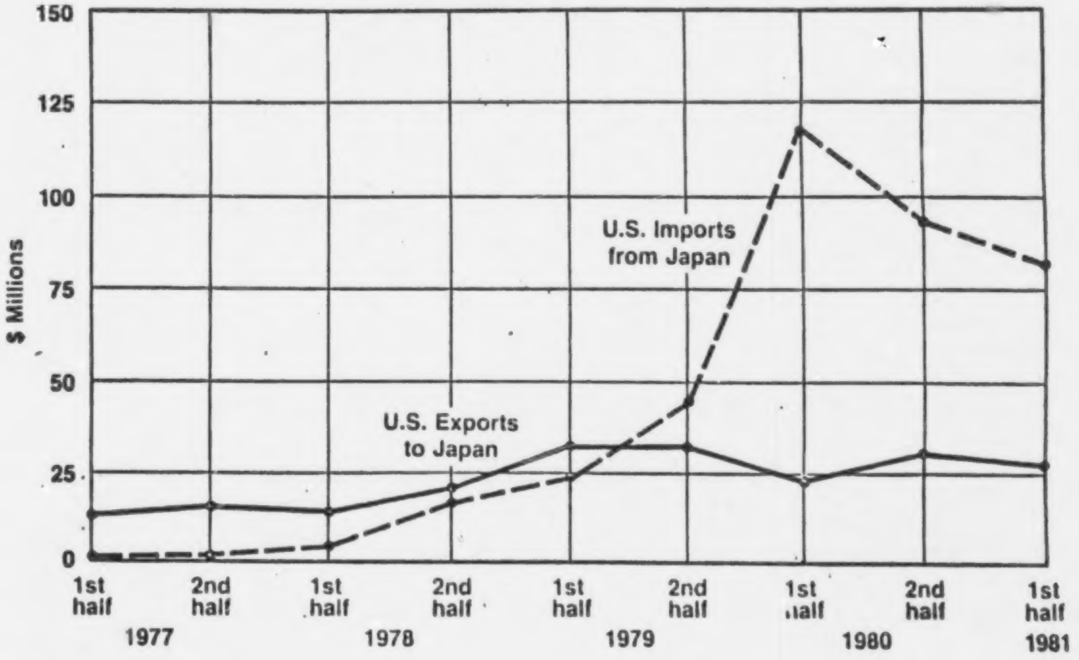


Data: U.S. Dept of Commerce

Sept 1981

061COR-529C

U.S./JAPAN TRADE BALANCE
(Total MOS)



Data: U.S. Dept of Commerce

Sept 1981

061COR-528C

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97TH CONGRESS
1ST SESSION

H. R. 4346

To implement certain recommendations of the United States-Japan Economic Relations Group report of January 1981, to assist in continued long-range improvements in United States-Japan relations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 1981

Mr. JONES of Oklahoma (for himself, Mr. GIBBONS, and Mr. FRENZEL) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs, Ways and Means, and Post Office and Civil Service

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A BILL

To implement certain recommendations of the United States-Japan Economic Relations Group report of January 1981, to assist in continued long-range improvements in United States-Japan relations, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSE OF ACT.

The Congress, aware that—

(1) Japan and the United States are longstanding partners and friends and are the world's major economic powers, in that they lead in the development of new

SEC. 302. TRADE IN SEMICONDUCTORS.

The President is urged to utilize the authority and procedures granted by section 102(b) of the Trade Act of 1974 (19 U.S.C. 2112) to negotiate a trade agreement with Japan, the European Economic Community, and other countries or instrumentalities thereof, as appropriate, providing, on a basis of mutuality, for (1) a substantial reduction in, or elimination of, rates of duty existing on January 1, 1982, on semiconductors and integrated circuits (provided for in items 687.65, 687.70, and 687.75 of the Tariff Schedules of the United States (19 U.S.C. 1202); and (2) the reduction or elimination of nontariff barriers to international trade in semiconductors, integrated circuits, and related high technology electronic products.

SEC. 303. FOREIGN LANGUAGE TRAINING AND FOREIGN AREA STUDIES IN FEDERAL AGENCIES.

Title 5 of the United States Code is amended—

(1) by inserting immediately after the first sentence of section 3396(c)(1) the following: "Sabbaticals shall be encouraged in order to develop knowledge of other countries among appropriate Senior Executive Service personnel. Such sabbaticals may include language training and study in fields necessary to provide for a full understanding of areas, regions, or countries in which such language is commonly used."; and

Chairman GIBBONS. Thank you, sir.

Our next witness is Mr. Peter F. McCloskey. Mr. McCloskey.

STATEMEMT OF PETER F. McCLOSKEY, PRESIDENT, ELECTRONIC INDUSTRIES ASSOCIATION

Mr. MCCLOSKEY. Thank you, Mr. Chairman.

I am President of the Electronic Industries Association and also a member of ISAC-5 which is the Industry Sector Advisory Committee on Electronics and Instrumentation.

My comments are in my role as president of the Electronic Industries Association and the 380 companies we represent.

I subscribe to the testimony that you have heard earlier today from both Tom Christiansen and Dr. Lidow.

I would like to focus my comments on two aspects of my written testimony which I understand from you will be inserted in the record.

Chairman GIBBONS. The entire statements of all of you gentlemen will be in the record.

Mr. MCCLOSKEY. The first area has to do with the R. & D. mentioned by both Dr. Lidow and Mr. Christiansen. I think we have taken a number of good steps in terms of the tax treatment of research and development in the recent Economic Recovery Tax Act of 1981.

There is one thing, however, that I think we can do that will enhance the capability of R. & D. and which will in no way affect Treasury revenues. I mean the encouragement of joint research and development.

Joint research and development is theoretically possible today. The Justice Department has a business review procedure whereby it can be authorized. Unfortunately, industry has not sought it out. It has been used only eight or nine times in the last decade.

So, it has not been an effective vehicle for encouraging joint research and development.

The reason is there is still antitrust liability that attaches to joint R. & D. Despite the guidelines which the Justice Department issued under President Carter, the last sentence of the cover letter emphasized that they are just guidelines.

Government's position can change. That has a chilling effect on joint research. I think the change that can be made is to put an insulation from liability around activities that fall within the scope of an approved business review letter from the Justice Department.

I would suggest that such insulation would encourage managements of companies to partake in joint research because they would no longer hesitate for reasons of potential liability.

I think that the new procedure should also include insulation from civil antitrust suits. It should not, of course, extend to actions that are beyond the scope of the business review, nor should the Justice Department be precluded from lifting that business review letter if they find that they were wrong in issuing it in the first instance.

But the companies shouldn't be subject to liability for engaging in just what they said they were going to do. I think that, if we were to take that simple step, we would see a change in the business philosophy of companies and their ability to use joint research at a time when we are faced with capital shortages, at a time when we are faced more importantly with scientific manpower shortages. It would be a very, very significant step that, I think, would greatly enhance our research and development capability and get us back on the road to real technological leadership.

That is one point that I wanted to cover.

The other one has to do with the general system of preferences, which is going to be coming up for statutory review. As was pointed out in earlier testimony today, we are facing investment restrictions in a number of developing countries. Yet, at the same time, we are granting GSP to these same countries as a matter of course. Patterns of trade are being formed in these developing countries, and when they solidify and remain in place, we can expect them to be there for a very long time.

These patterns are being influenced by our U.S. generalized system of preferences. As it now stands, the benefits of GSP are conferred on developing countries largely by virtue of their per capita income.

We feel very strongly that there should be three criteria. That the State Department ought to use the generalized system of preferences as a bargaining tool to insure that these countries respect the trade laws and regulations which have developed under the GATT.

Right now, there is no difference in treatment between the least developed of the developing countries and the most advanced of the developing countries.

We think there ought to be a graduation and that graduation ought to entail these countries' conformance with the generally accepted norms of international trade and investment, as was pointed out earlier.

The second thing is that we are facing restrictions on market access. There are restraints on imports from the United States placed on us by some of these developing countries. We feel that is wrong, that we ought to use the GSP as a negotiating tool to insure liberalization of those restrictions.

Third, the GSP as it stands now does not provide for any U.S. content. It is capable of being abused. It only requires that 35 percent of the content come from a GSP country. That leaves 65 percent which can come from anywhere else. If that 65 percent were to come from another developed country, then we are in a position where the GSP is being used as a conduit via a developing country to the United States. This puts our manufacturers at a trade disadvantage.

We feel that there should be some balance in a GSP item between the content from the beneficiary LDC, that from another developed country, and that from the United States.

That summarizes my testimony and I appreciate the opportunity to testify.

[The prepared statement follows:]

STATEMENT OF THE ELECTRONIC INDUSTRIES ASSOCIATION (EIA)

Our Panel is presenting the views on U.S. Trade Policy of four trade associations representing electronics-based high-technology industries:

The Electronic Industries Association;
The Scientific Apparatus Makers Association;

The Semiconductor Industry Association; and
The American Electronics Association.

I am Peter F. McCloskey, President of the Electronic Industries Association (EIA). I am also a member of the Industry Sector Advisory Committee on Electronics and Instrumentation (ISAC-5), but my further testimony is on behalf of the 380 companies belonging to EIA. We thank your Subcommittee for inviting us to present oral testimony today.

A description of EIA's membership and a summary of electronic manufacturers' heavy involvement in international trade is shown at the end of this Statement.

We submit that U.S. high-technology industry is exceedingly important to the nation, domestically and in world trade. Our Industry is successful; it is expanding, not contracting. High-technology industry deserves your particular attention, because it is the essential building block for the future of all U.S. industry.

We will focus on five of the topics included in your Subcommittee's August 7 Press Release announcing these hearings:

1. In the context of domestic policy: Improving Productivity and Technology. (Subcommittee Topic 3.b.).
2. In the context of domestic policy: The Adequacy of U.S. Trade Laws. (Subcommittee Topic 3.a.).
3. In the context of export policy: Disincentives, Controls, and Financing. (Subcommittee Topic 3.c.).
4. In the context of trade agreement policy: Multilateral and Bilateral Agreements. (Subcommittee Topic 2.a.).
5. In the context of U.S. trade policy: Improving the U.S. Competitive Position. (Subcommittee Topic 1.b.).

1. IN THE CONTEXT OF INDUSTRIAL POLICY: IMPROVING PRODUCTIVITY AND TECHNOLOGY

1.a. Investment in productivity and R. & D.

The first and foremost priority for improving the U.S. position in international trade should be the strengthening of the domestic economy. A healthy domestic economy is a prerequisite if U.S. firms are to be truly competitive in international markets. EIA is confident that an economic program geared to the needs of the nation's private sector will provide the necessary incentive for U.S. firms to increase their investment in productivity and in research and development. Both are necessary to restore the competitive position that has eroded during the decade of the seventies.

1.b. Joint research and development

The Economic Recovery Tax Act of 1981 went far toward providing a fiscal incentive for investing in R. & D. There is, however, an additional measure that the Congress might consider: to relieve an R. & D. handicap now imposed by the antitrust laws.

My proposal is simple: companies desiring to engage in joint research could take advantage of the business review procedure. The antitrust laws would be amended in order to provide that companies operating within the scope of an approved business review letter would be immune from civil and criminal antitrust action for activities within the scope of the approval. There would be no insulation of liability for actions which are deemed to be beyond the scope of the approval. The Justice Department could, at any time, lift the approval for cause deemed sufficient to it; however, the lifting of the approval would serve only to open liability for prospective acts, and not for prior acts (committed before lifting of the approval) that were within the scope of the initial approval.

In my judgment, over time, this could have a very substantial beneficial impact on commerce. It would lead to increased R. & D. and a more effective use of our scarce natural resources, particularly scientific personnel. The only additional costs to Government would accrue from increased activity within the Justice Department for the business review procedure—which would be a small price to pay for the overall benefit anticipated.

I do not believe that such a change would open flood gates for joint research; however, it would be the beginning of a long building process. I do not think it is the sole answer to our international competitiveness, but think it might be a vital part of it.

If, upon reflection, any of the Subcommittee's members feel that you could support such a legislative endeavor, EIA would be most happy to work with you or your staff to further the effort.

1.c. Section 1.861-8

There is a provision of the Economic Recovery Tax Act on which EIA's member companies are particularly appreciative. That is the 2-year suspension of the Internal Revenue Code's Section 1.861-8. Already, the suspension seems to be encouraging the conduct of more R. & D. in the United States rather than abroad. EIA is participating in the review of 861's impact which was mandated in the 1981 Act's provision.

2. IN THE CONTEXT OF DOMESTIC POLICY: THE ADEQUACY OF U.S. TRADE LAWS

2.a. Generalized system of preferences

Patterns of trade are being formed in the developing countries. If allowed to solidify, they would remain in place for a long time. Some of these patterns are being influenced by the U.S. Generalized System of Preferences (GSP).

As the law stands, important benefits are conferred on developing countries by virtue of their economic status, as measured by Per Capita Income. No effort is made to negotiate bilaterally with each prospective beneficiary nation. Yet, the United States clearly wants the trading nations to conduct themselves with maturity in the areas of investment constraints and market access.

The preservation of market access for imports from the United States into Third World nations is of considerable importance. USTR Bill Brock testified to your Subcommittee on October 28 saying: "Developing countries provide the fastest growing markets for U.S. imports. For the period 1973-1980 real GNP grew at an average annual rate of 5 percent in oil-importing developing countries compared to an average annual growth rate of just 2 percent in industrial countries. The products that these dynamic economies are absorbing—capital goods and heavy machinery as well as agricultural products—are just those items in which the United States is extremely competitive in the international market. During the 1970's oil-importing developing countries absorbed about one-quarter of all U.S. exports of manufactures and this share is increasing. At the same time, these countries buy approximately one-third of all our agricultural shipments."

EIA feels that the U.S. ought to use GSP as a lever to influence developing nations toward trade maturity. Accordingly, we call for the amending of GSP (Title V, Trade Act of 1974) in three respects:

1. "Beneficiary" status should no longer be framed as a "preference" to be granted developing countries but, rather, as a "concession" to be made if bilateral negotiation shows that a developing country's own conduct vis a vis the USA warrants it.
2. The bilateral negotiations should require better conduct in more respects from Advanced Developing Countries (ADCs) than from other Beneficiaries.
3. If an article imported from a Beneficiary country contains a substantial amount of materials or components from an industrialized country, then some of that non-local content should have originated in the USA.

or else entry of the articles from that country would not be duty-free. It would, instead, be at the ordinary MFN duty-rate. The U.S. Generalized System of Preferences should become a system for equitable importation from developing countries.

The list of Beneficiary Developing Countries currently includes one country which has rejected all parts of the MTN Package and terminated its participation in the General Agreement on Tariffs and Trade (GATT); three countries which are now imposing "performance requirements"—a new type of Non-Tariff Barrier ("NTB"); eight countries which are non-market economies; and seven countries with which the USA suffers a trade deficit.

Exhibit-A, attached to this Statement, lists only 30 out of the 141 countries which are presently Beneficiary under GSP. These 30 were selected in order to illustrate the factors which should be the subject of bilateral negotiation before a given country is accorded "Beneficiary" GSP status:

Has it signed these multilateral codes of conduct? Subsidies, Antidumping, Customs Valuations, Import Licensing, Government Procurement.

Has it agreed to "bind" its tariffs, i.e., to hold them at levels set in the MTN Tariff Agreements?

Does the country enjoy a bilateral trade surplus with the USA?

Is it a petroleum exporting country?

Does it have a "non-market" economy? N.B. None of the economic forces— of supply versus demand, of price versus cost, of high interest rates—are present in the non-market equation. Records of such factors are neither reckoned nor kept. How, then, can U.S. Customs audit the declared value of an article—or GSP's statutory requirement as to local content?

Is it dependent upon some other sovereign nation? N.B. Among the Beneficiaries are 32 "Non-Independent Countries."

Is it joining a "customs union" or a "free trade association" from which the USA is excluded? N.B. Portugal, in the process of joining the European Economic Community (EEC), is a Beneficiary.

Does it impose "Performance Requirements?" N.B. Brazil, Mexico, and Portugal (all Beneficiaries) do. Performance requirements are generally recognized as a distortion of trade.

Is it one of the Advanced Developing Countries (ADCs)? N.B. 26 of the 141 Beneficiaries are recognized as "Least Developed Developing Countries" but 11 Beneficiaries are not yet recognized as "Advanced Developing Countries." The latter should conform with the five codes of conduct cited, above, if we are expected to accord them Beneficiary status. N.B. Senators Heinz and Moynihan, when introducing S. 1150, explained, "It is also clear that the GSP program is failing to graduate the most advanced developing countries * * *." Their bill focuses on the five Beneficiaries accounting for 70 percent of GSP imports; it does not comprehend conduct or content.

Whereas GSP's intent was to encourage industrialization in Developing Countries, its design has enabled already-industrialized nations to get components and subassemblies into the U.S. market duty-free. While insisting that at least 35 percent of an article's value originate in the country (Local Content), GSP leaves the remaining 65 percent (Non-local Content) to originate anywhere else.

We recommend amending the "Content" provisions of GSP so as to require that if there is substantial Content from an industrialized country, then some of the Non-local Content must be of U.S. Origin.

2.b. Defense exports

Presently, computation of the U.S. balance of merchandise trade does not include the value of our exports of defense articles and defense services in the aggregate. In the EIA view, this computational decision is not indicative of the true picture of U.S. exports. Since the export of defense articles and defense services is no longer an extraordinary instrument of U.S. foreign policy, EIA believes that these exports should be added to the aggregate balance of trade, thereby more appropriately reflecting conditions as they exist today in the international marketplace.

2.c. Centralize trade functions

EIA favors the further rationalization of trade functions and oversight in both the Executive and Legislative Branches.

Conflict and duplication of efforts continue to confuse and complicate—rather than to rationalize and simplify—the formulation, implementation and oversight of the various aspects of international trade and investment policy.

3. IN THE CONTEXT OF EXPORT POLICY: EXPORT DISINCENTIVES, CONTROLS, AND FINANCING

3.a. The export disincentives

EIA is pleased at the continuing review, both in the Administration and Congress, of the disincentives to U.S. exporters which exist in statute, regulation, and administrative procedure. Review should ensure that each disincentive yields a net benefit to the national interest, because each does weaken the competiveness of U.S. exporters. The following disincentives are still in need of your attention:

Strategic and foreign policy controls on product exports, re-exports, and technology transfers;

Export embargoes;

Anti-boycott embargoes;

Human Rights controls on product exports and export financing;

Foreign Corrupt Practices Act;

Antitrust regulations;

Limitations on the Export-Import Bank's appropriations and charter; and

Recurrent attempts to repeal or cut back on DISC, "Deferral," and the Foreign Tax Credit—the only tax provisions that do boost exports.

Let me focus for a moment on the last-mentioned disincentives—because there is, right now, renewed tampering with DISC, Deferral, and the Foreign Tax Credit in a search for sources of additional tax revenue. These three measures are once again being viewed as potential revenue sources. EIA particularly urges the Commitee on Ways and Means' Subcommittee on Trade to appreciate the negative effect on the nation's exports of terminating any of these provisions.

3.b. Foreign Corrupt Practices Act

EIA supports fully the need to amend the Foreign Corrupt Practices Act. The "Business Accounting and Foreign Trade Simplification Act (H.R. 2530)" has been introduced with this objective in mind. The present law was drafted so ambiguously that even with special legal counsel—which thousands of smaller U.S. exporters cannot afford—companies remain uncertain of the law's implications. We urge the Congress to work for its early amending.

3.c. Export Trading Companies Act

Toward enabling U.S. companies to use some of the competitive sales and financing practices used by the Japanese, EIA asks the House of Representatives to pass the Export Trading Companies Act (H.R. 1648). Federal antitrust laws should be revised to permit and encourage manufacturers and distributors to form export trade associations, to utilize the export trading companies, and to develop successful international marketing networks.

3.d. Export-Import Bank

The role of finance in a successful trade posture cannot be underestimated. EIA urges the U.S. government to bring increased pressure to bear on other nations to eliminate subsidized government financing of exports as a trade distortion.

The Export-Import Bank of the U.S. (EXIM) exists to help U.S. companies compete effectively in world markets against foreign competitors. The budget-cutting aspect of President Reagan's Program for Economic Recovery depicts the funding of EXIM as containing an element of subsidy. We concede that an element of subsidy exists so long as the market terms at which EXIM must borrow exceed the competitive terms at which it makes loans.

The fact remains, however, that the governments of virtually all industrialized nations persist in subsidizing their export financing. Accordingly, we stress that EXIM funding should, at the very least, be maintained and, hopefully, increased to the extent needed to meet competition presented by foreign governments.

It should be clear that export transactions financed by EXIM have a very positive effect on U.S. jobs, not only within companies consummating the transactions, but also at the broader level of their subcontractors and suppliers.

3.e. Present export controls system

Export control regulations are needed to protect national security. But, as traditionally promulgated and administered by the Commerce Department under the Export Administration Act of 1979, they represent a disincentive to trade with every country in the world except Canada and are of questionable effectiveness. Canada is the only country to which shipments do not require export licenses. If a U.S. firm wants to ship to England, it must obtain an export license.

In other words, American exporters are penalized by our own government in ways which were unmatched by other governments, including those of our allies, and this has caused further disintegration of U.S. competitiveness.

Clearly, effectiveness depends upon multilateral enforcement. Without allied cooperation, U.S. controls and embargoes cannot be successful in achieving the desired result. Ultimately, U.S. industry bears the brunt of unilateral U.S. export controls.

Furthermore, EIA and its member companies question why, in those instances where a valid foreign policy concern (rather than a strategic concern) requires the imposition of export controls, concurrent foreign policy import controls are not also imposed. All too often, it is U.S. exporters who are penalized by the U.S. government's attempts to influence, modify, or change the behavior exhibited in or by a foreign country. A far more effective way to gain the foreign country's attention would be to stop the product flow—and dollar flow—in both directions.

EIA recommends that controls be imposed for reasons of foreign policy only when concurrent import controls are instituted vis-a-vis the same country.

Exhibit-B, accompanying this Statement, is a more detailed presentation of EIA's views on *foreign policy* export controls. Exhibit-B. represents EIA's November 2, 1981, submittal to the Office of Export Administration, Commerce Department—in response to their request.

3.f. Proposed "militarily critical technologies" controls

To satisfy a requirement of the Export Administration Act of 1979, the Department of Defense developed an initial List of Militarily Critical Technologies (MCTs) that, if transferred to a potential enemy, could enhance the military capabilities of such a nation. EIA believes that the objectives of a trade control system based on control of advanced technologies and products with security implications, have not yet been clearly established. Should they be, we believe that a more effective trade control system can be devised which, while tightening some controls, could have the potential for increasing trade overall in lesser products and technologies.

The following specific aspects of the MCT program warrant careful consideration:

Will the allies' Coordinating Committee (COCOM) adopt an MCT control system; if not, will the United States unilaterally control MCTs to the detriment of U.S. trade?

Will an MCT control system, intended to restrict technology flow to the Soviets, interfere with U.S. trade with our traditional trading partners in the West?

Do the Soviets have the ability to assimilate many of these technologies?

Given our open society and the large amounts of data in the public domain, could a control system based on critical technologies ever be effective?

An MCT control system, with its increasd requirements, will further exacerbate licensing delays, increase the export costs and jeopardize U.S. sales opportunities.

The MCT control system has proceeded without giving meaningful consideration to the collateral aspect of Foreign Availability, as was required in the 1979 Export Administration Act.

A premise of the MCT control system was that control of critical technologies would be accompanied by a decontrol of products and lesser technologies. While much time has been spent on defining elements in an MCT system there has been no effort, to date, to identify those lesser products and technologies which might be decontrolled.

EIA accepts the need for controlling trade with the Soviet Union and its bloc countries for reasons of national security. However, we must continue to question the formation of a trade control system based on military criticality embracing more than 600 technologies and products.

4. IN THE CONTEXT OF TRADE AGREEMENT POLICY: MULTILATERAL AND BILATERAL AGREEMENTS

4.a. MTN agreements

The Agreements which issued from the Multilateral Trade Negotiations (MTN) must be vigorously enforced and violations dealt with expeditiously by both the U.S. government and its trading partners. We oppose the present administrative practice of funding and staffing the Office of the U.S. Trade Representative and the Commerce Department only to a level which enables monitoring the conduct of this nation and its own compliance under these multilateral codes of conduct.

The mounting need to sustain these monitoring and enforcing functions is an important reason why further reductions in the budgets of Departments and Offices dealing with trade matters might be no less than crippling to the U.S. trade position.

4.b. NTT agreement

EIA played a unique role in the negotiations with Nippon Telegraph & Telephone Corporation (NTT) which led to the December 1980 agreement to open procurements by NTT to U.S. suppliers. The agreement was hailed as a positive step in U.S. Japanese trade relations and as an opportunity for American telecommunications manufacturers. However, while the market in Japan is large, it remains to be seen what portion of that market, if any, will be enjoyed by U.S. manufacturers.

The text of the NTT agreement is complex. Because of the perceived heavy reliance on good faith, many are skeptical about implementation of the agreement. Without reliable, real-time information regarding imports from and exports to Japan, neither Government nor industry will be able to quantify the effectiveness of the NTT agreement. It is absolutely essential to develop a solid statistical basis on which to judge results.

4.c. Access to European PTT's

We must be enabled to attain a larger share of the European as well as the Japanese markets for telecommunications equipment if we are put in the position of giving up a substantial share of the U.S. domestic market to foreign competitors taking advantage of the access available to our market.

4.d. Foreign barriers to investment

We urge positive action toward elimination of foreign barriers to investment, as well as to trade. By this, we ask for no more than "national treatment." American companies should be able to make investments in the countries of our trading partners; the resulting subsidiaries or affiliates should be able to do business, there, on the same basis as companies owned by nationals.

4.e. Standards agreement

Throughout Europe, there exists a standards and certification system known as CENEL; it covers a very broad field of electronic components, and a broader field of countries than the European Economic Community (EEC). Many procurements of commercial and defense electronic equipment by European governments specify the use of CENEL-certified components.

It is a regional (indeed, supra-regional) system that effectively excludes the use of American and Japanese electronic components in such equipment. It does so by confining its certification functions to component manufacturing plants physically located within the region. As such, CENEL is a Technical Barrier to Trade within the full meaning of the MTN Standards Code.

This is especially true in light of the fact that an international system does exist—and has for decades. Here, we refer to the International Electro-technical Commission (IEC), to which, interestingly enough, most of CENEL's members also belong. Forty-odd nations, including the USA and USSR, comprise the IEC (headquartered in Geneva, Switzerland).

However, IEC has not had a certification system until now. In January 1982, the IEC Quality Assessment (IECQ) system will go into effect. The activities and procedures of IEC (as to standards-writing) and IECQ (as to certifying that articles meet the standards) have been brought into conformance with the MTN Standards Code.

Thus, we suggest keeping up the pressure on the Europeans to bring CENEL into conformance with the MTN Standards Code.

In particular, the governments of the ten EEC nations should be induced to use their sincere "best efforts" toward that end.

Also, the EEC itself issues "Directives" on standards (safety and otherwise) which should be brought into conformance with the Code.

Furthermore, the Post-Telephone-Telegraph (PTT) organizations of the European counties—all of which are government-operated—have established CEPT (the Commission of European PTTs) for the ostensible purpose of "interconnection" between their respective communication systems. The operations of CEPT are effectively discriminatory and, accordingly, should also be brought into conformance with the Multilateral Standards Code.

In Japan, there are great difficulties involved in getting "Type Acceptance" for U.S.-made communications equipment.

Here, our Federal Communications Commission (FCC) follows an approval procedure which relates to Types, i.e., families, of equipment; once the Type has been accepted, various Models are acceptable. Japanese exporters avail themselves of FCC's simple and expeditious procedure.

In Japan, however, would-be American exporters find themselves confronted by the Japanese procedure. It entails Model-by-Model acceptance; our applicants must wait at least a year, sometimes five years. This typifies the "traditional" nontariff barriers which, covered by no multilateral code, can be lowered only by U.S. Government efforts in the U.S.-Japan Trade Facilitation Committee.

4.f. European rules-of-origin

It is commonly thought that trade between and among the ten nations of EEC is duty-free—and, by the same token, that trade between and among the five nations of the European Free Trade Association (EFTA) is duty-free.

Not true! The duty-FREE prerogative applies only to articles of "European Origin." That, in turn, is defined by the "European Rules-of-Origin" to which all 15 nations of EEC+EFTA subscribe. If a given article does not meet the criteria imposed by these Rules, then the MFN Tariff applies—even to shipments within Europe, just as if the article were being imported from the USA or Japan.

The general criterion is that 60 percent of an article's content must have originated in one or more of the 15 signatory nations or else the article is not deemed to be of European origin—in which case the MFN Tariff applies upon entering another signatory nation.

These Rules structurally favor the incorporation of European materials, parts, and subassemblies into the products of European manufacturers. They do so by means which impose a penalty over and above normal tariffs.

Whereas a European manufacturer might elect to import American or Japanese materials/parts/subassemblies on the established bases of performance, delivery, and price (including incoming tariff)—he is tacitly obliged to limit importation lest his own product lose its duty-free status intra-Europe.

That these Rules are discriminatory is best illustrated by the existence, within them, of special criteria which serve to protect certain European industries. The 3 percent Semiconductor Rule is a case in point. There, if more than 3 percent of an article's content is represented by non-European semiconductors, the article loses its duty-free status intra-Europe.

Bear in mind: the Semiconductor Rule exists in addition to the EEC's common external tariff (MFN) of 17 percent ad valorem.

The U.S. and Japanese tariff (MFN) on Semiconductors is 4.2 percent ad valorem.

4.g. Tariff-reducing authority (section 124)

One reason why the electronic industries favor extension of the Administration's authority to engage in residual tariff-reducing negotiations has just been given. The EEC had a 17 percent tariff on Semiconductors before the Tokyo Round of MTN; it still imposes the same rate. Meanwhile, the U.S. and Japan will very soon be imposing a 4.2 percent rate.

When USTR's negotiators seek tariff reductions from other nations, it is helpful to offer concessions that the United States would be willing to offer in exchange. In that light, the U.S. tariff on Clock-Radios no longer serves its intended purpose; there are no longer any U.S. manufacturers of Clock-Radios. That tariff could be eliminated, especially if its elimination would help us gain tariff parity on semiconductors or communications equipment.

4.h. Safeguards code

A notable failure of the MTN was its inability to reach agreement on a Safeguards Code. In a world of intensifying competition among nations, EIA strongly believes we must have a workable and practicable agreement as to the circumstances which may warrant immediate action by a government when injury to a domestic industry threatens to occur, and as to the measures which such government may then properly invoke.

4.i. Transborder data flow

EIA supports the principle of the Guidelines of the Organization for Economic Cooperation and Development (OECD) covering the protection of privacy and the transborder flow of personal data. We have urged our member companies to adapt their internal procedures to the spirit of these Guidelines.

4.j. Offsets and coproduction

Exhibit–C, attached to this Statement, is the full text of EIA's recent submittal to the House Economic Stabilization Subcommittee on the "Offsets" issue.

In summary, EIA does not favor Offsets, and views with great concern their increasing use by our foreign customers as a condition of doing business. Offsets distort normal trade relationships, are uneconomical, and only benefit the purchaser. We recognize that the total elimination of Offsets from major foreign purchases is probably not achievable, and that any effective restraints on Offsets would require a multilateral agreement among the major selling nations.

Offsets can take many forms, i.e., Coproduction, Licensed Production, Subcontract Production, Overseas Investment, Technology Transfer and Countertrade. These forms are all uneconomic, particularly coproduction and direct licensed production.

5. IN THE CONTEXT OF U.S. TRADE POLICY: IMPROVING THE U.S. COMPETITIVE POSITION

A major focus of a comprehensive U.S. trade policy should be the development of government-industry cooperation. Realizing that we can no longer ignore the realities of competition facing U.S. companies here and abroad, it is time for the U.S. government to call upon the private sector's expertise wherever possible. Likewise, industry resources should be used in a concerted effort to raise US. trade awareness. While the degree of government-industry cooperation exhibited, for example, in Japan may not be appropriate in the U.S., we can nonetheless attempt to learn from the successful international trade and investment policies of our trading partners.

Business, Labor and Government must place a higher priority on world trade. The development of a U.S. trade policy and, then, of laws and regulations consistent with that policy, will contribute to the general economic health and welfare of U.S. industry and the nation as well.

The U.S. can no longer espouse the philosophy that exportation is a privilege and a tool of foreign policy. Now, U.S. industry is engaged in an economic struggle with very able competitor nations. Our massive, cumulative trade deficit over the past four years and the continued cost of our energy dependence require that we recognize exports as a necessity.

EIA believes that the U.S. can and must handle trade problems in a more efficient and aggressive manner to support the private sector's trade and investment objectives. The complexity of world trade and investment and its ever-growing effects on U.S. institutions and society make it manifest that the development of a comprehensive, workable trade policy is not only an urgent U.S. priority but also a mutual responsibility of government and the private sector.

EIA supports the Statements on Trade Policy made on July 8, 1981, to the Senate by U.S. Trade Representative Bill Brock and Commerce Secretary Malcolm Baldrige.

The positions which Ambassador Brock entitled "The Reduction of Self-Imposed Export Disincentives" and "The Restoration of Strong Non-Inflationary Economic Growth" are excellent. As stated by Secretary Baldrige, the positions on removing trade barriers and streamlining the export control process were realistically linked to the necessity of reversing "the nation's record string of trade deficits totaling over $100 billion since 1976."

THE ELECTRONIC INDUSTRIES ASSOCIATION ("EIA")

EIA, a Washington-based trade association, represents some 380 American companies of all sizes, ranging from small single-product businesses to large multi-national corporations, involved in the design, manufacture and sale of electronic components, equipment and systems for governmental, industrial and consumer use.

In 1980, U.S. factory sales of electronic products exceeded $104 billion, of which over $20 billion was exported. That figure would be even higher if the electronic content in such equipment as airplanes, machine tools and other electronic-driven capital equipment were separately identified.

In the same year, the imports of electronic products were just over $13 billion, so that our sector produced a trade SURPLUS of almost $7 billion. That was in a period when the economy as a whole suffered from a $24 billion trade deficit.

Analysis of the several industries comprising the electronic sector reveals that Communications Products (plus $835 million) and Industrial Electronic Products (plus $9.8 billion) were the strongest factors in generating trade surplus, while Consumer Electronic Products (minus $3.7 billion) and Solid State Products, such as integrated circuits, (minus $223 million) suffered trade deficit.

Electronics manufacturing directly employs 1.6 million Americans. Of these jobs, at least 400,000 are tied to exports. Whether measured by production, trade or employment, "Electronics" continues to be a growth sector and one of the major, positive factors in the U.S. economy.

[Exhibit A]

KEY CHARACTERISTICS OF 30 "BENEFICIARY" NATIONS (GSP)

In the following tabulation, each country's characteristics are keyed to these criteria:

A = in 1980, the USA suffered a Trade DEFICIT with this country.
B = a petroleum exporting country.
C = a "non-market" economy which, more so than its Communism, means that its Prices do not reflect the true magnitude of Costs.
D = an allied country having an important defense-industrial base; a major competitor of the USA in supplying defense equipment.
E = exports from the USA to this country have been the subject of sanctions for reason of U.S. Foreign Policy (terrorism, human rights, invasion, etc.).
F = this country belongs to a Customs Union or Free Trade Association from which the USA is excluded. European Economic Community (EEC or "Common Market"). European Free Trade Association (EFTA). Central American Common Market. Latin American Free Trade Association.
G = this country might be included in proposed U.S. trade negotiations with the Caribbean nations.
H = officially designated as a Non-Independent Country in the Tariff Schedules of the United States (TSUS); the country is a dependency of some major nation.
J = officially designated as a Least-Developed Developing Country (LDDC) in the Tariff Schedules of the United States (TSUS).
K = when there is provision for designation as an Advanced Developing Country (ADC), this country is a candidate.

L = officially designated as a Beneficiary Developing Country under the U.S. Generalized System of Preferences (GSP).

Characteristics "S" through "X" indicate a country's willingness to conform with the multilateral rules on importation:

S = has NOT signed the MTN Customs Valuation Code.
T = has NOT signed the MTN Import Licensing Code.
U = has NOT signed the MTN Subsidies Code.
V = has NOT signed the MTN Antidumping Code.
W = has NOT signed the MTN Government Procurement Code.
X = a country which imposes trade-related Performance Requirements.
Y = partially-closed market.

KEY CHARACTERISTICS OF 30 "BENEFICIARY" NATIONS (GSP)

[Dollar amounts in millions]

	Exports to (1980)	Imports from (1980)	Trade balance (1980)	KEY ("A" through "L")	KEY ("S" through "X")
Angola	$111	$527	($416)	A, B, C, L	S, T, U, V, W
Argentina	2,625	741	1,884	E, F, K, L	U, V, W
Bahrain	197	16	181	B, L	S, T, U, V, W
Brazil	4,344	3,715	629	E, F, K, L,	T, W, X
Chile	1,354	515	839	E, F, L	S, V, W
Colombia	1,736	1,241	495	F, G, L	S, T, U, V, W
Costa Rica	498	356	142	F, G, L	S, T, U, V, W
Dominican Republic	795	786	9	G, L	S, T, U, V, W
Egypt	1,874	458	1,416	B, L	S, T, U, V, W
French West Indies	67	6	61	G, H	
Guatemala	553	435	118	F, G, L	S, T, U, V, W
Honduras	379	419	(40)	A, F, G, L	S, T, U, V, W
Hong Kong	2,686	4,736	(2,050)	A, H, K, L	
India	1,689	1,098	591	K, L	W
Indonesia	1,545	5,183	(3,638)	A, B, L	S, T, U, V, W
Israel	2,045	943	1,102	K, L	S, T, U, V, W
Jamaica	305	383	(78)	A, G, L	S, T, U, V, W
Korea	4,685	4,147	538	L	T, V, W
Malaysia	1,337	2,577	(1,240)	A, L	S, T, U, V, W
Mexico	15,145	12,520	2,625	F, K, L	S, T, U, V, W, X, Y
Netherlands Antilles	448	2,564	(2,116)	A, B, G, H, L	S, T, U, V, W
Philippines	1,999	1,730	269	L	S, U, V, W
Portugal	911	256	655	K, L	S, T, U, V, W, X
Romania	722	312	410	C, L	U, W
Singapore	3,033	1,920	1,113	K, L	S, T, U, V
Taiwan	4,337	6,850	(2,513)	A, K, L	S, T, U, V, W
Trinidad-Tobago	680	2,378	(1,698)	A, B, G, L	S, T, U, V, W
Tunisia	174	60	114	B, L	S, T, U, V, W
Venezuela	4,573	5,297	(724)	A, B, F, G, K, L	S, T, U, V, W
Yemen (Sana)	77	1	76	J, L	S, T, U, V, W
Yugoslavia	756	446	310	C, E, L	W

Sources: "Highlights of U.S. Export and Import Trade." Publication FT990, December, 1980. U.S. Department of Commerce (Bureau of Census). Exports taken from table E-3: Domestic and Foreign Merchandise, World Area and Country of Destination (f.a.s. Value Basis) 1980 and 1979. Imports taken from table I-6: General Imports, World Area and Country of Origin (f.a.s. and c.i.f. Value Basis) 1980 and 1979 * * * EIA used the "f.a.s." basis in this tabulation.

Oil exporters taken from table 8. Summary of U.S. Trade with OPEC and Other Selected Oil Exporting Countries.

"Status of MTN Code Signatures." Sept. 25, 1981 Memorandum by USTR's Kathryn Flynn.

[Exhibit B]

STATEMENT OF THE ELECTRONIC INDUSTRIES ASSOCIATION (EIA) TO THE OFFICE OF EXPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

COMMENTS ON THE EFFECTS OF FOREIGN POLICY EXPORT CONTROLS

The Electronic Industries Association (EIA) welcomes this opportunity to comment on the effects of foreign policy export controls in response to the Notice published in the September 1 Federal Register by the Office of Export Administration. As will be explained in greater detail, we oppose the imposition of such control unilaterally and favor the imposition of import controls concurrently.

EIA feels that foreign policy should ideally be formulated and executed on a government-to-government basis, with private sector input but little direct involvement. This notwithstanding, we support the declaration of Congress that it is U.S. policy to use export controls only after full consideration of the impact on the domestic economy, and, with respect to foreign policy objectives, only "to restrict the export of goods and technology where necessary to further significantly the foreign policy of the U.S. or to fulfill its declared international obligations."

EIA agrees wholeheartedly with the finding of Congress in Section 2 of the Export Administration Act of 1979 that "restriction of exports from the U.S. can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the U.S. are more extensive than those imposed by other countries."

Clearly, effectiveness depends upon multilateral enforcement. Without allied cooperation, U.S. controls and embargoes cannot be successful in achieving the desired result. Ultimately, U.S. industry bears the brunt of unilateral U.S. export controls.

Furthermore, unreasonable restrictions on the community of nations' access to supplies from each other can cause macroeconomic and political instability, distort the flow of international trade, and retard the growth of developing nations.

In view of the foregoing, EIA submits the following as the bases for foreign policy controls on trade:

(1) Unilateral foreign policy controls harm U.S. international trade and investment, strengthen our foreign business competitors, and are ineffective in achieving the desired result.

(2) Effective foreign policy controls must be developed and enforced on a multilateral basis.

We draw your attention to the following areas of foreign policy export controls to suggest needed revisions:

(1) With respect to the Republic of South Africa, the U.S. should eliminate its unilateral prohibition against the sale of virtually all commercial products to the military and police entities while continuing its support of United Nations Security Council resolution 418, of November 4, 1977, the multilateral embargo on military sales and assistance.

(2) With respect to the foreign policy controls regarding regional stability and human rights . . . which require special review and validated licenses to all but NATO nations, Japan, Australia and New Zealand . . . the U.S. should broaden the list of "excepted" countries to include other West European nations (Sweden and Switzerland, for example) along with other allies from Central and South America.

Regarding specific examples of business lost through foreign policy export controls, EIA recommends drawing from the contents of the following Government reports and the confidential business disclosures that were associated with them . . . as the bases for instituting necessary changes:

(a) "Report of Working Party No. 5 to the Chairman of the Inter-Agency Export Disincentives Task Force"; February 1980.

(b) "Report of the President on Export Promotion Functions and Potential Export Disincentives"; transferred to Congress September 1980.

Finally, EIA and its member companies question why, in those instances where a valid foreign policy concern requires the imposition of export controls, concurrent foreign policy import controls are not also imposed. All too often, U.S. industry is penalized by the U.S. government's attempts to influence, modify, or change the behavior exhibited in or by a foreign country. What better way, we ask, to gain the foreign country's attention than by stopping the product flow—and dollar flow—in both directions?

EIA recommends that export controls be imposed for reasons of foreign policy only when equivalent import controls are instituted vis a vis the same country.

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Electronics manufacturing directly employs 1.6 million Americans. Of these jobs, at least 400,000 are tied to exports. Whether measured by production, trade or employment, "Electronics" continues to be a growth sector and one of the major, positive factors in the U.S. economy.

STATEMENT OF ELECTRONIC INDUSTRIES ASSOCIATION (EIA)

The Electronic Industries Association numbers among its 380 member companies, many who are involved in the manufacture and export of defense and other high technolgy electronic products. Because of the pervasiveness of such products as significant content in major defense equipment procurements, these manufacturers are particularly impacted by offset requirements which are "flowed down" to second and third tier suppliers from the prime contractor.

It is on behalf of these members of our Association that we offer the following comments and recommendations.

We do not favor Offsets, and view with great concern their increasing use by our foreign customers as a condition of doing business. Offsets distort normal trade relationships, are uneconomical, and only benefit the purchaser. We recognize that the total elimination of Offsets from major foreign purchases is probably not achievable, and that any effective restraints on Offsets would require a multilateral agreement among the major selling nations. Before proceeding to offer specific recommendations, we believe our views on several of the major adverse effects of Offsets would be appropriate.

OFFSETS ARE UNECONOMIC

Offsets can take many forms, i.e., Coproduction, Licensed Production, Subcontract Production, Overseas Investment, Technology Transfer and Countertrade. These forms are all uneconmoic particularly the case of coproduction and direct licensed production. The actual unit cost to a foreign buyer will be lower if the contract is for 500 units than it would be if only 250 units are purchased from a U.S. manufacturer. There are savings in quantity-buy for material and learning-curve savings in labor. If the foreign buyer wants to produce the item, there will be additional costs for data, start-up costs, capital equipment costs, higher material costs for reduced quantity, higher labor costs, and, in the case of licensed production, a probable royalty. The U.S. manufacturer that is in production could probably produce the additional 250 units required by the foreign buyer for half the cost that the foreign country would pay to produce the product.

The foreign buyer's rebuttal to the above is that, while they realize that the foreign taxpayers are paying more, their economy is receiving the technology transfer and, in the future, their nation would not be dependent on the United States for the particular item; and furthermore, their manufacture of the item provides employment and otherwise benefits the economy, particularly if the technology has application to other products.

However, the price of the product is inflated both in the United States and in the foreign country. While the foreign country is willing to pay this premium, the real loser is the United States, and particularly U.S. Industry, whose technology and manufacturing know-how has been transferred. In the case of state-of-the-art high technology, this can affect our National Defense or our National Security Policy.

OFFSETS AND TECHNOLOGY TRANSFER

"Offset" is a concept that has grown considerably more subtle and complex in its ramifications than the original, simple economic offset idea. In many instances, the evaluation of bids to potential foreign customers includes a consideration of the degree of "Offset" proposed, in addition to the customary criteria of price, performance, and delivery. Further, the degree of the Offset can be (and has been) weighted to reflect the relative "quality" of the Offset. For example, offset which promises technology transfer is often perceived, and weighted, as having a higher quality than simple countertrade. Similarly, a promise to create a manufacturing or service facility providing jobs for locals carries a higher quality rating.

The issue of Offset, then, has become more complicated than a question of respective trade balances. Offset exerts strong leverage on the questions of Technology Transfer and its long-range effects on the U.S. economy.

OFFSETS AND THE U.S. INDUSTRY MARKET SHARE

It is a fact of today's world that some countries cannot, for real or perceived political or economic reasons, commit to certain purchases of major defense equipment without some measure of Offsets. On the other hand, when several American and/or foreign manufacturers are competing for a major procurement, the buying nation can turn the demand for Offsets into a virtual auction, where the resulting offsets are escalated in every round of bidding. Continued demand for Offsets will distort the international defense industrial business.

To the extent that an Offset entails the transfer of technology, the purchasing country often can use that technology to develop a competing product line for "third country" markets, with a corresponding loss of market-share to U.S. industry.

OFFSETS AND TRADE BALANCE

Foreign purchasing governments often justify their demand for Offsets by reference to a substantial imbalance in arms trade, favoring the U.S. To date, in matters associated with Offsets, both the U.S. and foreign governments have not given fair consideration to the overall trade balance. It is likely that when all U.S. expenditures in a specific country are taken into account, the balance would be much less favorable to the U.S. and, in some cases, actually favor the foreign country.

The U.S. expends considerable sums abroad for consumer goods, tourism, maintaining U.S. defense and non-defense government buildings, staffs, and services; it makes grants and "forgives" loans. Under such circumstances, it is unrealistic to limit consideration only to an imbalance of arms trade.

OFFSETS AND THE DEPARTMENT OF DEFENSE

The Department of Defense (DoD) policy is to "not normally enter into compensatory coproduction and offset agreements * * *" nevertheless, the overall DoD policy of promoting cooperative programs creates an environment conductive to Offsets demands by foreign buyers.

RECOMMENDATIONS

1. The U.S. Government should take no unilateral action which would impair the ability of U.S. industry to compete in world markets for procurements involving Offsets.

2. The U.S. Government should initiate negotiations with major defense trading nations to reach multilateral agreement controlling Offset practices. Since there would obviously be no benefit to buyer nations in such agreement, and since the number of nations selling major defense equipment is relatively small, the initial emphasis should be placed on agreement among the seller nations to control Offset offers.

3. In the absense of multilateral agreements limiting or prohibiting Offsets, the U.S. Government should approach offset demands on a case-by-case basis; it should use its diplomatic and economic leverage to moderate buyers' demands, giving due consideration to the aggressiveness of foreign competition. It should provide active support to U.S. industry in meeting such demands.

4. The Department of Defense should reexamine its procedures and practices relative to understandings and agreements, as to arms cooperation with our allies. It should consult with the affected industries prior to entering into any arrangement which explicitly or implicitly encourages offset demands by foreign buyers.

5. The U.S. Government should insist on offset credits from foreign purchasing nations for a wide range of defense and non-defense expenditures in each nation by the U.S. Government and its citizens.

It is gratifying to note the interest of this Subcommittee and of the Departments of Defense and Treasury in considering the Offset problem. Representatives of our Association will continue to work cooperatively with concerned elements of the Congress and the Administration towards improvement in this area of Offsets.

Chairman GIBBONS. Very interesting testimony from each of you gentlemen.

Mr. Lidow remarked about how the Japanese economy was closed to American parts.

Could you all explain to us how you perceive this market to be closed? I know there is a tariff differential, and we are negotiating to try to remove that tariff differential. But what else happens in the Japanese market?

Mr. LIDOW. Well, currently the United States enjoys a mere 13 percent of their market. That is an extreme distortion of the rest of the world. The United States has 63 percent of the rest of the world's market.

We are not asking that the United States dominate every market. But if there is an industry that is a broad line supplier of all semiconductor components that is competitive in all other world environments, it is a remarkable feature that we only have 13 percent of the Japanese market. And that is primarily in components that the Japanese, a more narrow line supplier of semiconductors, primarily in the components they don't build.

Chairman GIBBONS. How do they go about this exclusion?

What methods, techniques, do they use to keep you out?

Mr. LIDOW. Well, I have personally been to Japan trying to sell semiconductor components on two occasions. The methods vary very much. I was in front of one group of people to sell the products, and found out after about 20 minutes that I was not talking to the group of people that buy products, but I was, rather, talking to the group of people that is mandated to imitate products.

So they were there, and it is very difficult to get these things out sometimes with the language and cultural barriers. But they were there asking the kind of questions that would facilitate their imitating the device as opposed to buying the device. They were not interested in that.

Indeed, we have never sold them any.

Mr. MCCLOSKEY. I can add to that if you like, Mr. Chairman.

Chairman GIBBONS. I would like as much detail as possible.

Mr. MCCLOSKEY. I was president of an electronics company that sold very successfully into Japan because the product we had to sell was not available on the Japanese market. It happened to be an optical character reader, a data processing input device. It was a digital analog device in its first incarnation.

As we improved the product, we tried to get more of the analog functions into digital functions. We incorporated a small general purpose computer. When we did that and the computer was built into the system, we had great difficulty getting the improved product into Japan because it was no longer an item that they didn't have.

They felt very strongly that we ought to incorporate a computer available in Japan rather than the one to which we had designed our interfaces, and for which we had designed our softwear.

So there was a great negotiation. It wasn't until the creative solution of calling that item a controller that we were able to bring that product into Japan. But that is typical. The Ministry of Trade was very involved; they were issuing instructions or "Administrative guidance" to the company that was importing it for us.

I think they had a very clear concept of where they were, where they were going. What they wanted was to oblige us to use local product to the maximum extent that they could. They discouraged nonlocal content.

Chairman GIBBONS. That was a governmental action as you perceived it?

Mr. McCLOSKEY. It was a governmental action because we couldn't get an import certificate. My perception now is that there is greater realization on the part of the Japanese Government, and top managements, in their companies, that this is a very serious problem.

We have a serious trade imbalance and we are going to have to do something about it. But, because of the very nature of the Japanese people, and because of their tradition of consensus-building from the bottom up—despite the fact that top management or top government officials might be beginning to understand—it hasn't permeated down to levels where purchasing decisions are actually made.

So it is going to be a very long time before that consensus changes. It might require some kind of an affirmative action program as we have had here, to insure that this message is understood on their part.

Mr. LIDOW. Excuse me, Mr. Chairman. It is for these very reasons.

You have heard two people tell you how we haven't been able to sell Japan. They have given you two specific examples that are totally different. If you get a hundred people in the room you will get a hundred different examples.

It is an example of the sort of wall of fog that U.S. suppliers see in Japan. There isn't any 1 or any 10 or any 100 specific regulations that prevent us from doing it.

It is all of these regulations in concert. That is why we are forced to ask for specific compliance with openness, rather than saying you stop doing this and you stop doing that.

Chairman GIBBONS. You know, I think your wall of fog is a very apt description of the problem. I thought, first of all, it was just me having a hard time understanding, because I had talked to so many people over there about this problem of their market.

You know, in many ways their market on paper appears to be open. But for cultural and other reasons, we are just not able to penetrate it. And I have come to the conclusion, you know, that it is no longer our responsibility to have to penetrate it. They have got to show us how to penetrate it.

They do have a different type of society than ours. Their society is not nearly as open as ours. I am not casting any aspersions about their personal friendship or personal conduct.

It is an island mentality that permeates them based upon their history, where conversely we have a much more open, broader acceptance of people and of ideas and of things from other parts of the world.

I think the Japanese have to understand at every level that they have been granted a tremendous opportunity to rebuild their society by access to our market. And we are grateful for the product they have been able to produce.

But we expect reciprocity from that—not just paper reciprocity, actual reciprocity. That, I think, is a serious problem that we must get across to the Japanese.

I would imagine that with the unfavorable trade balance we are going to have with the Japanese in the next year that the pressures in Congress will be uncontainable. Some kind of legislation is going to come out of this body.

I may not even vote for it. I may be vigorously opposed to it. But I am going to get run over on that issue. I can see it coming. It is happening all around me right now. I hope that all of you who have any contact with the Japanese will explain it to them.

I find that the businessman, when I explain it to him, understands it. But I have not had the slightest bit of success with the Tokyo bureaucrats. That is from the prime minister on down. It is a wall of fog. I think you put your finger right on it. But it has to be corrected.

Mr. Christiansen, you mentioned a great many things we ought to do here, and I agree with you. But this Congress in many ways is like other political bodies, we have to be pushed.

I hope that through your organization you can really put the pressure on the committees that are sitting on these bills dealing with export trading companies, dealing with the Foreign Corrupt Practices Act. We are trying to push them, but their colleagues trying to push them, frankly, is not nearly as effective as their constituents pushing them.

Mr. CHRISTIANSEN. Yes, sir; I agree with you.

Chairman GIBBONS. Obviously, we need action on those things. But I appreciate your coming here and reminding us over and over again that you do need action.

We are going to try to help you on DISC, and I have got to swallow a lot of words in order to do that. But we are going to try to help you on that because it is a tool that we need in this day and time.

Mr. McCloskey, I think you brought us excellent points on GSP. We are just not using it as we should. The Congress didn't pay much attention to GSP when we passed it back in the seventies.

I was part of that process, and we had so many other things on the table here in the Ways and Means Committee that we didn't really look at it.

But I think we are going to look at it now. We expect reciprocity when we extend GSP. A fair type of reciprocity. We don't expect GSP to just be a conduit for some other developed nation penetrating our market.

So I hope, when we get around to legislating next year on all this, we can take all that into consideration.

You have given us some excellent ideas and some excellent background.

Mr. Frenzel.

Mr. **Frenzel**. Mr. Chairman, I can't remember when I have heard a more complete and better presented set of testimony than this panel presented.

I don't mean to say that the other panels haven't been good. They have been extraordinary through this whole set of hearings. They have been, I think, extremely helpful. You gentlemen have done beautifully. None of you mentioned 806, 807.

Yesterday we had a witness that suggested we ought to repeal those sections.

I assume that you would want us to continue.

Mr. **McCloskey**. Absolutely.

Mr. **Christiansen**. Yes, sir; that is right.

Mr. **Frenzel**. You mentioned, Mr. Christiansen, that you wanted to sustain the DISC. The chairman indicated that he wanted to sustain it, too. So do I, until we replace it with something better. The chairman and I recently introduced a bill calling for a territorial system of taxation with——

Mr. **Christiansen**. In this connection, sir, in my written statement I have included some observations on Foreign International Sales Corporations [FISC's], which have been suggested by various legal authorities.

I think a FISC would be very difficult for a small- or medium-sized business to handle.

Mr. **Frenzel**. We agree with you. I think ours allows an option.

Mr. **Christiansen**. I hope if and when the time comes when you are examining alternatives to DISC's that you will think carefully about the small- and medium-size companies which I think would have a terrible time with any complicated——

Mr. **Frenzel**. Right. Mr. Gibbons and I have introduced a bill for discussion purposes. We are not sure what is in there ourselves. We think export incentives are insufficient. While we want to protect the DISC, it is really not much of an incentive. I think all of you would agree with that. Better than nothing.

Mr. Lidow, on page 4 of your testimony, let me see if I can find it again, you indicated that the United States should maintain its policy of keeping the U.S. market open to Japanese high technology products.

There is now a bill, I think still in the Communications Subcommittee of Commerce, that has some restrictions in it specifically relating to some sort of industry equalization thing.

Japan has to buy communications equipment, or otherwise they can't sell in the United States. I assume you would find that perhaps contrary to the goal you suggest in that statement?

Mr. **Lidow**. I would be wrong if I spoke for the telecommunications industry. I personally don't know all the ramifications of the requests they have put in for reciprocity.

I believe it is a dangerous double-edged sword, reciprocity, as it is stated there, because it does allow for the U.S. semiconductor industry in particular to be less competitive and still sell their product.

It is a very delicate balance we have with the high technology industry. We want to keep the vigorous innovation going. I personally am in favor of a very, very open competitive system in order to maintain this.

However, there may be other advantages to putting legislation in like that. For example, it may be a message that we have had enough. It may be a message that, unless we see some real action on the part of the Japanese, we are going to start using these kinds of terms, reciprocity.

Mr. FRENZEL. The problem is that once you take the stake out of the vampire's heart and it rises from the grave, you have very little control over it any more. We like messages, too. But we are very nervous about firing the first shot in a trade war which could get out of control.

Mr. LIDOW. I can understand that. I think that yes, it has to be very carefully done. I believe the statement is extremely vague, which is very good. The statement is that reciprocity can be considered. That, I think vagueness is the most important thing at this point.

Mr. FRENZEL. Amen.

I think hard lines, at least publicly, or written in law, really make it difficult for us to negotiate. However, giving our negotiators more power is a good thing. And some real threat of ultimate damage probably has to be conceded along with whatever other powers they have.

I do agree with you also that the Japanese have been absolutely adament, recalcitrant and have been delighted to feast off of our market while protecting their own. Nobody wants to stand for that on a long-term basis. We hope Ambassador MacDonald's trip was successful. But I wonder if any of you believe the news stories that Prime Minister Suzuki and his cabinet have created a wonderful five-point program that is going to instantaneously open the Japanese market for all sorts of American sales. Anybody believe that is going to happen very fast?

Mr. MCCLOSKEY. Afraid not.

Mr. FRENZEL. Nor I.

Mr.—the real Pete McCloskey—in your testimony on page 4, also, subparagraph 3, you have what looks like a domestic content requirement which would seem to be foreign to the rest of your trade outlook. Can we justify that?

Mr. MCCLOSKEY. Well, I think the issue is whether the GSP or beneficiary country will be used as a conduit or whether it, itself, is attempting to create an industry indigenously. There are 141 beneficiary countries. We are not objecting to content from any of those 141. But, in the very possible circumstance could have, where 65 percent of the content came from one other developed country, and 35-percent—which may only be the value of labor—came from the GSP country, then there exists a situation which was not likely intended when you passed the act in 1974.

Mr. FRENZEL. I would be happier to give the GSP on the 35-percent local than to insist where the other content came from.

Mr. MCCLOSKEY. I would agree with you that GSP should certainly apply to local content.

Mr. **Frenzel.** I think that is contrary to the principles we all believe in in relatively unrestricted trade.

Mr. **McCloskey.** I would have no difficulty in agreeing that that portion which originated in that country should be allowed to enter the United States duty free, and the remainder subject to duty.

Mr. **Frenzel.** The chairman has often stated that if the Congress had any idea what it was doing with GSP in the 1974 Trade Act, we never would have passed the act. Suddenly, we begin to realize what has happened. Two administrations have gone through graduation processes to try to make it more reasonable. I think you have advanced some excellent suggestions as to how we might make GSP a real benefit for developing countries, but not allow others to take advantage.

Actually, the people who are the big beneficiaries of GSP are ADC's or NIC's rather than the LDC's. I think probably this committee should look into developing some guidelines along the lines that you have suggested. I think it is a very valuable testimony for the committee. Mr. Chairman, with a panel like this, we could spend a day or a couple of days. I have already exceeded my time. I therefore yield it back with thanks again to the panel.

Chairman **Gibbons.** Mr. Bailey.

Mr. **Bailey.** Thank you, Mr. Chairman. I very much appreciate the comments both you and Mr. Frenzel have made. It is very encouraging to me as a new member of the committee. I want to say to the panelists here that, after reading the statements and listening to you, it is very difficult for me to suppress a desire to run out there give each of you a big hug. It is downright excellent testimony. I do not think our country realizes just how close we are to a situation where incentive here to invest or even to do research is going to be lost and we lost a market for a product. That technology is lost, perhaps not to be regained.

We have some good examples where distortions in investment in our own country can be caused by foreign practices where the U.S. market is that great market free and open to all that becomes used to maintain feedstock industries, et cetera, at home. We have seen this kind of experience with the steel industry, and we are seeing it with a lot of others.

There is a concept in the civil law called tacit collusion. I want to go back to something Mr. Frenzel said. I too, I suppose, as a politician, would not like to see definitely restrictive hard things written into our law, certainly not that are meant to target or pick out a particular country. But I do not know how you get the message across to the Japanese. When I served a term on the Armed Services Committee, we had to deal with the Japanese on this issue of defense. How much they pay for defense. And the Japanese and some of the conservative members are very conciliatory. Remind you we wrote the Constitution, and those kinds of things.

And they are right. But realities and times have changed. I would suggest that I do not think the businessmen or Government understands the problem over there at all. They understand it, but I think they use that cultural attitude. They are very willing to use it. They are very willing to use it as an explanation against you as an excuse why you cannot enter those markets.

I think we are going to have to hit the mule between the eyes with a 2 by 4 before it is all over, because I just do not think they understand anything else. We are just going to have to get tough. We are being bled. While the country still has our technology edge and while we still have a huge share of the world's domestic market for so many products, I think we are going to have to try to develop some international standards of what terms like investment and subsidization and those kinds of things mean.

Are you aware that the Japanese Government Ministry of Trade has literally sat down as a matter of policy and decided that within 10 years, Japan will be a net technology exporter, not a net technology importer. And I would venture a guess that you and I know—you know this—are one of the major targets for that very specific, intense, and deliberate Government program to replace your technological edge in the field that you have earned through practicing in accordance with the dictates of free enterprise in this country.

Are you aware of that? Do you know that they have made that decision? They have set out guidelines dealing with protections of their markets. All they do is protect, or control consumables and control imports in their markets to divert resources through specific and deliberate Government policies until they are going to come right in and undersell you, and you are just literally going to die off in 3 to 5 years.

You know that. A deliberate policy. No darned case of not knowing what is going on, or jeez, our people just have this attitude. They have done nothing but sit back and hemmed and hawed and used up every little bit of time to develop policies that are so infuriating that I hope the Europeans and us, and I hope the rest of the world, wake up to it because we are being victimized.

It is an absolutely deliberate policy. Not an accidental thing about it.

Mr. McCLOSKEY. There is no question we are aware of it. That is why our emphasis is on trying to open that market, on trying to get antitrust relaxation as far as research is concerned, and trying to do the best we can to be competitive. They have had not only policies, but they have also had public laws on their books that required rationalization of their industries and collaboration on joint research. We do not have any encouragement in that regard.

Mr. BAILEY. I want to go back to what was asked before by, I cannot remember if it was Chairman Gibbons or Mr. Frenzel. Do you really think they are going to do anything about these problems? I mean I cannot conceive of the Japanese, as successful as they have been at taking advantage of free markets worldwide, I cannot conceive with their dedication, they are geared to it. And they have political constituencies, too.

You know, as a politician I can appreciate that. Do you really think that you are going to see a change without very stiff and tough action? I think the chairman is 100-percent right. It does not matter what you say on the floor of the House. I may be on the other side from many because I am so darned angry about their practices, but you are going to see a real reaction in this country.

Mr. McCLOSKEY. They will change only if they see it is in their self-interest to change.

Mr. **Bailey**. Yes, sir, I very much agree with that.

Mr. **Lidow**. I think, if you will, Mr. Bailey, the approach we have not taken is the one that is taken very often against semiconductor companies in general by their customers. We do a lot of business with huge multinational companies that control large percentages of world markets. They never have to tell us to stop delivering to them, but they still get very, very low prices.

In other words the power of negotiation that comes with being very large allows you to get what you want without having to close the doors or without having to hurt yourself. I think that we need perhaps a change in strategy in our negotiation such that we say that your agreement no longer is good enough. What we need is specific evidence of quick implementation of the agreement.

Mr. **Bailey**. Well, I would suggest this to you. What we really need to do is get back trade. We need an international legal order that will make economically available to the private sector the tools and powers to go out and a force to do something about these problems.

I had some people call me in my district, Gould Electronics, who had sold some switches, electronic switches to a group in Taiwan. The Japanese apparently heard about the sale and came in. They do not produce a switch. I got this in black and white from the Taiwanese, incidentally. They do not produce a switch of equal quality. They do not produce a switch that can carry the load, or whatever was involved.

But what happened was that under pressure, because of general market conditions in different areas, Japanese control of the market, went back and changed their specifications. In fact I think even paid penalties to pick up that market from the Japanese. That is the way the Japanese do business. I could go on.

Maybe we did business that way. Maybe we still do business that way. But when you do business that way in this country, you can do something about it. And the Japanese, they are just flat out there to pick apart this world's economy, to develop their own market and to drive other people out of business.

Often times it does not have a darned thing to do with quality or productivity. We are so fond of thinking that whatever they do, it is because they have done it more productively. That is a bunch of nonsense. That is just not true. It is not true at all. And if anybody wants to be a pure, free enterprisist, then you have to say that that is a terrible distortion of what the word free enterprise means in efficiency and everything else.

I hope we get tough as heck, and I hope they understand and learn what a sledge hammer looks like, because that is the kind of mentality they have, and they are going to have to change or deal with that, because people are getting angry all over the world about those practices.

I thank you.

Chairman **Gibbons**. I thank the panel for its very concrete testimony.

Our next witness is Mr. Charles R. Carlisle, vice president of St. Joe Minerals Corp., on behalf of the Group of 33. He is accompanied by Mr. Stanley Nehmer, President of Economic Consulting Services, Inc.; and Peter Feller, of McClure & Trotter.

STATEMENT OF CHARLES R. CARLISLE, VICE PRESIDENT, ST. JOE MINERALS CORP., ON BEHALF OF THE AD HOC LABOR-INDUSTRY TRADE COALITION (GROUP OF 33), ACCOMPANIED BY STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC. AND PETER FELLER, McCLURE & TROTTER

Mr. CARLISLE. Thank you, Mr. Chairman.

Chairman GIBBONS. Let me interrupt. If you are not using those lights, could you turn them off and save a little electricity? You know, we are glad you are here, but your lights are hard. Just turn them on whenever you need them.

Mr. CARLISLE. Good morning, Mr. Chairman, I am Charles Carlisle, vice president of St. Joe Minerals Corp. headquartered in New York City. On my left is Mr. Peter Feller, a partner in the law firm of McClure & Trotter. On my right, Mr. Stanley Nehmer, president of Economic Consulting Services, both of Washington, D.C.

With your permission I would like to file our complete statement for the record and I will try to summarize it.

We are here on behalf of the Group of 33, the name which has been applied to an ad hoc coalition of 33 trade associations and labor unions. A list of our member organizations is attached to the testimony.

The group was formed in the late 1970's to advise the executive branch and Congress during the Tokyo round trade negotiations, particularly the negotiation of the subsidies code and the antidumping code. Subsequently it offered advice on the development of the implementing legislation.

The Group of 33 remains deeply concerned about the proper implementation of the countervailing and antidumping duty statutes. Our group supported the MTN and the Trade Agreements Act of 1979. I would like to feel we helped to develop a consensus in this country necessary to the adoption of both.

We did that because we were convinced that the implementation of what was negotiated in Geneva would represent a giant step forward in providing American industry and labor with fair and effective recourse to our unfair trade statutes.

Since that time, Mr. Chairman, at least some people in our organization and I suspect elsewhere have been somewhat disappointed with events. We fear that what is being lost is the critically important need to develop public support for trade policy and to maintain that support by actions that are widely perceived to be consistent, fair, and in accordance with previous commitments. Put another way, this means emphasizing the rule of law and predictability in trade cases, and deemphasizing, if not ignoring entirely, foreign policy factors.

I would like to turn for a moment to the administration, the present administration, of the unfair trade statutes and to bring up one case I personally believe is very important. First, I think we all agree that subsidies and dumping clearly distort trade and investment patterns.

Export subsidies of course are inherently protectionist. Commitments from developing countries—I speak of the developing countries now—to eliminate their export subsidies as a prerequisite for receiving an injury test by the United States under our countervailing duty statute were a major issue before the Trade Agreements Act was passed in 1979, and were a major issue during the negotiation of the GATT subsidies code.

During those negotiations and while the legislation was before the Congress, the executive branch assured industry and labor that developing countries would be required to make commitments to phase out their export subsidies during a reasonable period of time before they would be accepted as a country under the subsidies agreement.

These assurances have not been honored, neither by the Carter administration in a case involving Pakistan, nor by the Reagan administration in a case involving India. Both of these countries were accepted by the executive branch as countries under the subsidies code without meaningful commitments as to the future elimination of their export subsidy.

Now, the granting of an injury test is really the only leverage we can exert to secure developing countries' commitments to phase down and out their export subsidies. I might just say, parenthetically as it were, that the public support needed for effective trade policy has not been enhanced by this.

I want to just put in a personal note if I can. We are not here, at least I hope we are not creating the impression that we are here, raising this subject out of a sense of pique. I am raising it because I think that LDC export subsidies are potentially a very, very serious problem. They cannot only affect labor intensive industries, but can also affect high technology industries of the type that were just before the subcommittee.

The Taiwans, the Brazils, the South Koreans of this world can produce, really, anything. Now in all fairness, Ambassador Brock and his general counsel, with whom we have discussed this matter, have taken the position that, really, they did all that they could under the GATT subsidies code and under U.S. law. I can only say that members of the trade bar—lawyers here in town whose opinion I respect greatly—feel that we did have the power under the GATT subsidies code to deny the injury test in the case of both Pakistan and India. Perhaps, if you wish, subsequently we can get into this a little bit.

I would now like to turn to several problem areas where we believe the U.S. trade laws are currently inadequate, beginning with unfair trade practices. The first point I want to raise concerns exchange rate fluctuations under the antidumping law. The present system of floating exchange rates has created serious distortions in the administration of the antidumping law. This is based on the use of quarterly exchange rates announced by the Fed at the beginning of each quarter to compare a foreign producer's home market price to its export price to the U.S. market.

The Commerce Department, which of course now administers this law, has adopted a rule to negate any dumping margin caused solely by exchange rate fluctuations. The problem with the rule is that it is entirely one-sided. It only applies where the foreign producer is adversely affected. There is no corresponding adjustment when the use of quarterly exchange rates adversely affect American industry. We do believe that statutory amendment or revision is necessary.

The second point that I want to raise is something that we would call downstream dumping. This refers to preferential pricing by foreign suppliers for parts, components and raw materials used in the production of products abroad for exportation to the United States. Such international price discrimination is obviously an unfair trade practice that the present U.S. antidumping law does not cover.

In our prepared testimony we cite a not so hypothetical example of a Japanese steel mill selling to Japanese fabricators at a price which, if used in this country, would be a dumping price. As I suggest, the existence of this type of dumping is not conjectural, it is not theoretical. It has arisen in a case involving industrial fasteners.

The gentleman to my left, Mr. Peter Feller, is quite familiar with this. Again, we would urge the Congress to amend the antidumping law to close this loophole.

The third point I would touch upon is a remedy for intentional dumping. In our view there is an urgent need for a meaningful remedy for U.S. producers who are financially damaged by the intentional dumping of foreign products in the U.S. market. The Predatory Dumping Act of 1916, which provides for treble damages, has proved to be useless for that purpose, primarly because of the virtual impossibility of sustaining its specific intent requirement.

The imposition of antidumping duties, as this subcommittee is well aware, only operates to prevent future dumping injury. It does not compensate for injury sustained before the imposition of antidumping duties.

What makes this a significant problem is that there can be, as all of you know, a considerable lag between the time a foreign producer begins to dump his goods on the U.S. market and the time when an American firm or industry discovers that it is a dumping victim. What we suggest is that the law be amended to do three things. First, to moderate the standard of culpability. Second, to decriminalize intentional dumping. And third, to provide for compensatory, rather than punitive, damages.

Finally, I would like to turn to the accommodation of national security interests under our trade laws. In our judgment our trade laws do not adequately accommodate national security interests where imports are concerned. The escape clause provisions in the Trade Act of 1974 prescribe nine factors that the President must take into account in deciding whether to grant, or to extend, escape clause relief to a domestic industry seriously impacted by imports.

The importance of the domestic industry to the national mobilization base is not one of those factors. What this means is that strategically important products, such as ball bearings and machine tools, can be treated in the same way as relatively frivolous items, such as champagne glasses.

We believe that this should be corrected. Now, some people might say, well, we already have a statute on the books, and that is section 232 of the Trade Expansion Act of 1962, which does authorize the President to take action with respect to imports which threaten to impair the national security. In practice, however, that statute has been a dead letter. It has only been used once in the past to control petroleum imports.

The statute does not even have emergency authority. We believe there is a need for a thorough congressional review of the relationship between import policy and our national security interest in maintaining an appropriate industrial mobilization base.

In closing, I just want to say that it seems to me that the trade agenda, by its very nature, is never finished. What I have heard this morning would lead me to believe that this subcommittee and the Congress itself are going to be looking at some further amendments to our trade laws. We certainly hope that you will do so, and we certainly are very glad, too, that you are monitoring the administration of the present trade statutes.

That concludes our prepared testimony. Thank you very much.

[The prepared statement follows:]

STATEMENT OF CHARLES R. CARLISLE, VICE PRESIDENT, ST. JOE MINERALS CORP., ON BEHALF OF THE AD HOC LABOR-INDUSTRY TRADE COALITION (GROUP OF 33)

INTRODUCTION

My name is Charles R. Carlisle. I am Vice President of St. Joe Minerals. I am accompanied by Peter Buck Feller, partner in the law firm of McClure and Trotter and by Stanley Nehmer, President of Economic Consulting Services Inc., both of Washington, D.C.

We are here on behalf of the "Group of 33", the name which has been applied to an ad hoc coalition of 33 trade associations and labor unions which are deeply concerned about the proper implementation of the countervailing and antidumping duty statutes and other legislation dealing with unfair trade. Although we have a commonality of interest and purpose, not all of our member groups concur in all of the details of the positions taken by the group. A list of our members is attached.

Our group advised both the Executive Branch and the Congress during the negotiation of the Subsidies and Antidumping Codes in 1978 and 1979, and in the development of implementing legislation in 1979.

We supported the MTN and the Trade Agreements Act of 1979, and we feel that we helped to develop the consensus in this country necessary to their adoption. We did so because we were convinced that the implementation of what was negotiated in Geneva would represent a giant step forward in providing American industry and labor with fair and effective recourse to our unfair trade statutes.

Commitments for effective implementation were made to industry and labor as part of the development of the national consensus that resulted in Congressional approval of the Geneva negotiations and the passage of the Trade Agreements Act of 1979. Some of us have been disappointed with events since. We fear that there is being lost the critical importance of developing public support for trade policy and of maintaining that support by actions that are widely perceived to be consistent, fair, and in accordance with previous commitments. Put another way, this means emphasizing the "rule of law" and predictability in trade cases, and the deemphasizing of foreign policy factors.

ADMINISTRATION OF UNFAIR TRADE STATUTES

Certainly no one can disagree that there is a need to reduce subsidies and dumping in international trade. These practices clearly distort trade and investment patterns. Export subsidies, of course, are inherently protectionist. Our Government invested much time and effort in the negotiations which led to the present Subsidies and Dumping Code. Congress itself was engaged for many months in drafting legislation that would provide for effective implementation of these codes. But what was negotiated in Geneva and what Congress passed into law will be meaningless unless there is proper enforcement on the part of the United States.

In this regard, the question of securing meaningful commitments from developing countries to eliminate their export subsidies as a prerequisite for receiving an injury test by the U.S., was a major issue before the Trade Agreements Act was passed in 1979. The Executive Branch assured industry and labor that developing countries would be required to make commitments to phase out their export subsidies before they would be accepted as a "country under the Agreement". These assurances have not been honored. To our great disappointment, in the case of Pakistan and, more recently, in the case of India, these countries were accepted by the Executive

Branch without meaningful commitments as to the future elimination of their export subsidies.

The only leverage we can exert to secure developing countries' commitments to phase down and out their export subsidies is the granting of an injury test. Yet we have granted the injury test to these two countries without securing their commitments to dismantle their export subsidies over a reasonable period of time. This surely is not consistent with the basic objectives of the Subsidies Code. There should be no mistake in anyone's mind: the public support needed for an effective trade policy is not enhanced by the Executive Branch making commitments on how it will proceed under the trade statutes and then failing to live up to these commitments.

We are deeply concerned with what has happened since the Tokyo Round, and we will continue to fight to see that our trade laws are implemented as Congress intended them to be.

We want to direct our remarks now to the future because the trade agenda—by its very nature—is never finished. We live in an ever-changing world, and our trade laws must recognize and meet new challenges. For that reason, we appreciate this opportunity to bring to your attention several problem areas where U.S. trade laws are presently inadequate.

REMEDIES AGAINST UNFAIR TRADE PRACTICES

Although important strides were made in the Trade Agreements Act of 1979 to improve the effectiveness of our laws dealing with dumping, subisidies and other unfair trade practices, there are still considerable gaps in those laws. The principal ones we are concerned about relate to (1) the treatment of exchange rate fluctuations under the antidumping law, (2) the apparent absence of any remedy against "downstream dumping", and (3) the absence of a meaningful remedy to compensate domestic producers for damages sustained because of dumping.

1. Exchange rate fluctuations under the antidumping law

The system of "pegged" exchange rates under the Bretton Woods Agreement was abandoned in 1973 in favor of a system of floating exchange rates. This has created serious distortions in the administration of the antidumping law which is based on the use of quarterly exchange rates (announced by the Federal Reserve at the beginning of each quarter) to compare the foreign producer's home market price to its export price to the U.S. market. That approach only works, however, when exchange rates are reasonably stable over the period of an antidumping investigation.

Recognizing this problem, the Commerce Department has adopted a rule to negate any dumping margin which is caused solely by exchange rate fluctuations (19 CFR 35.26(b)). This is a sensible rule, except for one thing. It is entirely one-sided; it only applies where the foreign producer is adversely affected. There is no corresponding adjustment where the use of quarterly exchange rates adversely affects the American industry concerned. It appears that a statutory amendment is necessary to prevent the continued unfair skewing of the exchange rate adjustment rule against domestic industry and labor.

2. Downstream dumping

The phrase "downstream dumping" refers to preferential pricing by foreign supplies for parts, components and raw materials used in the production of products abroad for exportation to the United States. Such international price discrimination is obviously an unfair trade practice which the present U.S. antidumping law does not cover. In essence, the practice of "downstream dumping" can be used to circumvent our antidumping statute. To illustrate: "A steel mill in Japan sells steel to the U.S. metal fabricators at $100 per unit. It also sells the same steel to Japanese metal fabricators at $80 per unit. The Japanese fabricators in turn export their finished products to the U.S. market at a $20 per unit advantage on their raw material costs."

In this illustration the $80 price for steel would be a dumping price if the steel were exported to the United States directly.

However, the Japanese steel mill is able to dump steel in the U.S. market through the Japanese metal fabricators, even though it could not export the steel directly to the U.S. market at $80 per unit without incurring antidumping duties.

Downstream dumping can have an enormous impact on our economy and yet we are defenseless against it. The existence of this variety of dumping is not conjectural. It was recently documented on the public record in a recent hearing before the International Trade Commission with respect to industrial fasteners. During that proceeding information supplied by Japanese fastener manufacturers showed that the price they paid for steel wire rod was substantially below the published U.S. trigger price for equivalent wire rod. As you know, the trigger price, represents the "fair value" of the product according to the concepts embodied in the antidumping statute as determined by the Commerce Department.

We urge the Congress to amend the antidumping law to close this gaping loophole.

3. Remedy for intentional dumping

In our view there is an urgent need for a meaningful remedy for U.S. producers who are financially damaged by the intentional dumping of foreign products in the U.S. market. The so-called Predatory Dumping Act of 1916 (15 USC 72), which provides for treble damages, has proved to be useless for that purpose. The result is that there is only half a remedy available to domestic producers for this type of unfair trade practice. The imposition of antidumping duties only operates to prevent future dumping injury. It does not compensate for injury sustained before the imposition of antidumping duties.

What makes this a significant problem is that there can be as all of you know, a considerable lag between the time a foreign producer begins to dump his goods on the U.S. market and the time when an American firm or industry discovers that it is a dumping victim. It is not sufficient to know that competing imports are being sold at low prices. Information on prices in the home market or in third-country markets must be developed to determine whether price discrimination exists. This can be an extremely difficult and expensive exercise, especially for U.S. firms or industries that are small, fragmented or otherwise not equipped to police imports in this manner. In the meantime sales may have been lost, workers laid off, profits reduced, capital improvements put off, and so forth.

Presumably, the 1916 Antidumping Act was designed to provide such compensation where there was a specific intent to destroy or injure a U.S. industry. However, the 1916 Act has failed to serve that purpose. Experience has shown that the statute is unworkable, primarily because of the virtual impossibility of sustaining the specific intent requirement. As a result no remedy has ever been extended under this 65 year old law.

We submit that this law should be amended (1) to moderate the standard of culpability, (2) to de-criminalize intentional dumping, and (3) to provide for compensatory rather than punitive damages (except in aggravated cases).

ACCOMMODATION OF NATIONAL SECURITY INTERESTS

It seems self-evident that national security interests should play a major role in trade policy decisions. Certainly, Congress has accommodated national security interests with respect to exports, as reflected in the Export Administration Act. That statute provides a clear policy and mechanism for controlling exports to avoid prejudice to the security interests of the United States. However, our trade laws do not adequately accommodate national security interest where imports are concerned. Let me cite two examples:

1. First, the "escape clause" provisions in the Trade Act of 1974 prescribe nine factors the President must take into account in deciding whether to grant, or to extend, escape clause relief to a domestic industry seriously impacted by imports. As strange as it may seem, the importance of the domestic industry to the national mobilization base is not one of those factors. Thus, strategically important products, such as ball bearings, motor vehicles and machine tools, are treated in exactly the same way as champagne glasses, yo-yos, and wooden clothespins. This should be corrected.

2. Section 232 of the Trade Expansion Act of 1962 authorizes the President to take action with respect to imports which threaten to impair the national security. In practice, however, that statute has been a dead letter. It has only been used to control petroleum imports. The Commerce Department, which is supposed to be in charge of industrial preparedness, as well as section 232, has a policy against self-initiation of section 232 investigations. This makes little sense in our view. The statute itself doesn't even have emergency authority, as found in section 22 of the Agricultural Adjustment Act (relating to commodity imports undermining U.S. price supports) or section 406 of the Trade Act of 1974 (relating to disruptive imports from Communist countries).

We believe that there is an urgent need for a thorough Congressional review of the relationship between our import policy and our national security interest in maintaining an appropriate industrial mobilization base.

In that connection, there is increasing recognition that import displacement of essential domestic production capacity has alarming national security implications.

Thus, the Defense Industrial Base Panel of the House Armed Services Committee reported last year: "There has been a serious decline in the nation's defense industrial capability that places our national security in jeopardy. . . . [I]mport penetration into certain industrial sectors, such as machine tools, industrial fasteners and semi-conductor devices, suggest an unacceptable dependency on foreign sources for key elements of defense production." [1]

GROUP OF 33

Amalgamated Clothing & Textile Workers Union, AFL-CIO.
American Apparel Manufacturers Association.
American Federation of Fishermen.
American Footwear Industries Association.
American Pipe Fittings Association.
American Textile Manufacturers Institute.
American Yarn Spinners Association.
Bicycle Manufacturers Association.
Cast Iron Soil Pipe Institute.
Clothing Manufacturers Association.
Copper and Brass Fabricators Council, Inc.
Industrial Union Department, AFL-CIO.
International Ladies Garment Workers Union, AFL-CIO.
International Leather Goods, Plastic & Novelty Workers Union, AFL-CIO.
Lead-Zinc Producers Committee.
Luggage & Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association.
Metal Cookware Manufacturers Association.
National Association of Chain Manufacturers.
National Association of Hosiery Manufacturers.
National Cotton Council.
National Handbag Association.
National Knitted Outerwear Association.
National Knitwear Association.
National Outerwear & Sportswear Association.
Northern Textile Association.
Scale Manufacturers Association, Inc.
Synthetic Organic Chemical Manufacturers Association.
Tanners Council of America, Inc.
Textile Distributors Association.
United Food and Commercial Workers International Union, AFL-CIO.
Valve Manufacturers Association.
Work Glove Manufacturers Association.

Chairman GIBBONS. Mr. Carlisle, we appreciate your fine statement and the specificity with which you attack some of these problems. I think all of us agree that Pakistan and India were a mistake. Members of this committee tried to warn the administration when we found out about it. We will continue to warn them and we are warning them about this kind of treatment of Mexico and other countries that are constantly hammering on our door for preferential type of treatment.

Mr. NEHMER. Mr. Chairman, do you think warning is sufficient in they were warned on Pakistan and yet a year later entered into a similar arrangement with India. This is a question we have in our minds.

Chairman GIBBONS. Yes; I agree. There is always that problem. Perhaps we ought to change the law. These things have a way of analogizing themselves. You do something for Pakistan, you have just got to do something for India. It is getting that way in the Near East, too. You do something for one, you have to do something for another.

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[1] "The Ailing Defense Industrial Base: Unready for Crisis" (Dec. 13, 1980).

I agree with you. Our objectives should be to make our trade laws rules of law, rather than rules of vague public policy that stand on sand, shifting sand. That is my personal objective, to try to get it to a rule of law.

You raised some interesting points about the effective exchange rate problems. Perhaps we can do something to try to help that. You were talking about downstream dumping.

You mentioned Mr. Feller was very interested or had additional knowledge on this. I wonder, Mr. Feller, if you would like to elaborate a little on that.

Mr. **FELLER**. Yes; thank you, Mr. Chairman. The problem is most evident right now in steel and steel-related industries. The practice of downstream dumping presents itself as a way to circumvent the trigger price mechanism for steel. Essentially what has happened in this example that we talked about, which is based on evidence provided on the public record before the International Trade Commission, is that the raw material, let's say that industrial fasteners are made with, which is wire rod, is sold by Japanese steel mills to their own domestic producers of fasteners at a price which is about 20 percent below the trigger price.

Now the trigger price for that product, for wire rod, is conceptually the fair value of that. The Commerce Department determined fair value under our dumping law concept on the basis of steel mill prices and costs in Japan. Consequently, what has happened is that a Japanese steel mill will not sell to the United States at a price below trigger, but will sell to its domestic producers of the fabricated product which then finds its way into the U.S. market with this tremendous differential in the cost of the raw material.

The dumping statute however does not cover that. The dumping statute only works with the wire rod coming in, or when the fabricated product itself is dumped. The implications it seems to us, Mr. Chairman, are enormous for our economy. It really means that if this practice is widespread, which we believe it is, that all the fabricators of steel in this country would be subject to a tremendous competitive disadvantage, an artificial one, because of this dual pricing. In effect, the Japanese could dump steel in the United States by sending it through the fabricated product to the United States, but our laws do not cover it.

We think this is a gaping loophole that really needs to be addressed.

Chairman **GIBBONS**. Do we just need to get rid of trigger pricing?

Mr. **FELLER**. We are not here either to defend or condemn the trigger price. The trigger price notion naturally is a device to prevent dumping of steel in the United States. If it is effective in that, that is fine. That is the way it ought to be.

But if it has the secondary effect, one has to recognize that that has to be corrected also.

Chairman **GIBBONS**. I know it sounds terrible to say it, but I told you so. The first hearing we had about trigger pricing, I brought you hypothetically the same kind of thing that you have outlined here. And I am sure it goes on. Nobody in this country can get enough information to set a reasonable trigger price. I have looked over all those trigger price regulations, and talked to people in the steel business about them. Frankly, it is an administrative monstrosity. I see I am getting Stan's Irish up over there.

Mr. **Nehmer**. I just want to say you get downstream dumping whether or not you have the trigger price mechanism. The same kind of concept Mr. Feller pointed out would apply.

Chairman **Gibbons**. I have a lot of fabricators, and they are a lot more scared of what has happened since trigger pricing then they were before. They felt they were getting a pretty good break as far as prices were concerned before trigger pricing, but they do not feel that way now. They feel the hot breath of the kind of competition that——

Mr. **Feller**. I think the problem would exist anyway, Mr. Chairman. Let us say the trigger price were removed tomorrow, and the Japanese began selling wire rod to the United States at below what was the trigger price. There is nothing to prevent a steel company from filing a dumping complaint, thus maintaining the fair value of the imported wire rod.

You would still have the problem of downstream dumping to avoid that case.

Chairman **Gibbons**. Do we not have the same thing here? I have fabricators that would tell me, you know, I cannot buy material from American steel companies because they are in competition with what I am fabricating, and they just would not answer the telephone when I call them. Or they would not give me a price, or they would not give me a delivery date, or they certainly would not give me a firm price, because I am in competition with something they are fabricating.

I have that problem drilled into me all the time by fabricators in my area trying to deal with U.S. concerns, because they are here, they are convenient, they like to deal with their fellow Americans. But they say, you know, I am fabricating something that, for instance, United States Steel is fabricating. And I cannot get as good a price. They will tell you, United States Steel could not be selling to their subsidiary at the same price they are selling to me or the subsidiary would go broke trying to fabricate it.

Mr. **Feller**. I agree with you, Mr. Chairman. The problem multiplies itself on the reserve side of the trade flow. Imagine a steel fabricator in the United States trying to sell his product in Japan in competition with local Japanese steel fabricators that are able to buy their raw materials from Japanese steel mills artificially at a preferred price.

Chairman **Gibbons**. I agree. The more bureaucratic tangle we introduce into the whole system, the more dissatisfied people we are going to have in this country. I do not like the trigger pricing mechanism. I think it is just a price-fixing arrangement, ill-disguised, in my book. All that has happened out of trigger pricing is that the Japanese have raised their price, the U.S. mills have been able to raise their price and the European mills have raised their price.

We have had a foreign aid program going for Europe with trigger pricing that far surpassed anything we ever did in the Marshall Plan for them. Yet it is taken out of the hide of the U.S. consumers.

Perhaps you would like to respond to some of the things I have been saying here.

Mr. Carlisle. I must say, Mr. Chairman, I do not think the three of us pose as experts on the trigger price mechanism. What we are really doing is simply bringing up a problem that we think is worthy of exploration. I do feel that whether one defends the trigger price mechanism or not, on the basis of some economic training I received a long, long time ago, I do believe that dumping is inherently bad .

Chairman Gibbons. I agree. No doubt about that.

Mr. Carlisle. Right. That is all I would say because I do not really feel personally prepared to debate the ins and outs of the trigger price mechanism.

Chairman Gibbons. This is a pricing mechanism. I can tell you that. Every time you have a pricing mechanism, prices go up, whether it is in dairy products or in fibers or fabrics or clothing or anything else. Let's go to page 7 of your testimony. You are making some suggestion there as to what we ought to do about our antidumping laws. Would you expand on that, please, at the bottom of page 7?

Mr. Carlisle. I think again I would like to ask Mr. Feller to respond to that, Mr. Chairman.

Chairman Gibbons. Certainly.

Mr. Feller. Mr. Chairman, I think that the essential concept is this: That if I could liken it to a bad neighbor in a neighborhood coming to your house and vandalizing your property. It is fine for you to get an injunction against him to prevent him from doing it again, but who is going to compensate you for the loss that you have sustained? The 1916 so-called Predatory Dumping Act I think was designed to at least in part compensate victims of intentional dumping for the losses that they sustained in their business.

That law is also essentially a dead letter. It has never once been used to give a remedy to any domestic industry that has been a victim.

We would suggest that such a useless law, I suppose, either should be stricken from the books altoghether, or it ought to be made workable. And we suggest that it can be made workable in a number of respects.

No. 1, if the emphasis were to be placed on knowledgeable knowing dumping, that is, price discrimination taking place and proved, then it ought to be focused on compensating the victim, rather than punishing the victim for the energy he has sustained. Right now, there is a required treble damage provision in the law, and also criminal sanctions are provided in the law. We would recommend that that be taken out.

We would also recommend that one times the damage, the injury, be the basis for an award of a judgment to a victim that proves his case. In return for that, the access to this law should be moderated so that it is meaningful and can be used.

Chairman Gibbons. Explain to me a little more specifically what you mean in your last paragraph, to moderate the standard of culpability, to decriminalize the intentional dumping. I think you have done that. To provide for compensatory rather than punitive damages except in aggravated cases.

Mr. **Feller**. The standard in the law right now is that the plaintiff would have to show a specific intent on the part of the importer or the foreign producer to destroy or injure a U.S. industry. Essentially he has got to develop information, evidence on the basis of what may take place abroad with great specificity to prove his case.

As a practical matter, that really cannot be done. Very few industries would be able to mount the resources to, let's say, go to country *x* where the language is different, the business practices may be very secretive and very unopen, shall we say. It is a standard that has been shown to be impossible to meet.

Chairman **Gibbons**. Thank you, sir.

Mr. Bailey.

Mr. **Bailey**. Thank you very much, Mr. Chairman.

I would like to thank all of you for the statements that you made. They are very supportive of a lot of things I have been saying. I appreciate it.

Let me at the outset say I would like to work with you. I am very grateful for the specific recommendations you have made on potential legislative proposals.

I would invite you to get more information. I would like to sit down with you, get with our staff and other members of the committee, and perhaps draft up some changes that are reasonable and go at this problem.

I think you have some good suggestions here.

Mr. **Carlisle**. We would be glad to do that, Congressman.

Mr. **Bailey**. Please do so. I would be happy to try to work with you. I am really interested in the concept which we have run into before. Incidentally, referring to the fabricator case, I can empathize with your fabricator. I think what causes part of that problem is that many of the American steel companies maintain or try to maintain some kind of balance between their primary steel production and their finishing capacity.

I think many times that does affect their marketing. I would suggest, however, that if we had a healthier approach to the steel industry in this country, that if we had been able to do more reinvestment, it is a very competitive industry, that you could shop around in a lot of cases.

We had this thing with high tension steel rails in this country, that big debate over the EPA project, Colorado Iron and Steel, you may be familiar with.

One of the real arguments there on the displacement study that was done was that they actually got into this issue of finishing capacity for some companies.

What we found, of course, was that some companies just really did not want to increase their secondary or finishing capacity. As a result, they were opposed to some companies that had a high primary capacity that wanted to increase secondary capacity.

So I think there is a point there that might be well taken except I think those fabricators can shop around in most cases.

If it were not for some unfair competition sometimes from overseas, they would have a variety of markets and places to go in this country.

I want to ask you to elucidate. In simple terms in the downstream dumping situation that you referred to, Mr. Feller, you are really talking about a product that, all things considered, including the Japanese fabricator end of it, a product that really enters this country at or below cost. Is that correct?

Is it sometimes close to cost? If it does enter here, are we talking about an overall profit margin that is very low, or what?

Mr. **Feller**. There are two ways of looking at costs in those circumstances. If we are talking about a fabricated, rather than steel mill product, such as whether it is a ball bearing, industrial fastener, a car body, whatever it might be, the cost to the fabricator is not necessarily, or the price that he would charge is not necessarily a dumping price.

Mr. **Bailey**. Oh, no. I realize that. Excuse me. In simple form what I am trying to say is this: Taken as a whole, are you talking about products that are sold in this country in some cases below cost of production, fabrication, et cetera, transportation taken as a whole?

Mr. **Feller**. If you include the steel mills cost in that equation, I would say yes.

Mr. **Bailey**. But it doesn't necessarily have to be in order to very seriously undersell fabricators in this country?

Mr. **Feller**. That is correct, sir.

Mr. **Bailey**. I think that is a very important point to make, because we might be subject at some point to criticism by those who could perhaps conjecture that you are really not taking it as a whole.

You are really talking about what they would think a dumping situation or below-cost situation would be. But the overall effect, of course, in many ways is to drive American competition in the fabrication area completely out of the market.

Mr. **Feller**. Yes, sir; that is correct. I think that is the logical effect. That will hurt the American steel companies who sell to these fabricators, also.

Mr. **Bailey**. That is the second point I was going to make, because once you decrease the market in this country for primary capacity, which in effect you would do, because you are never going to be able to produce that steel and ship it in to Japan, you simply are not going to be able to replace that capacity. There is not going to be an incentive to, naturally, because you get your feet sold out from under you. You are just not going to risk it.

Second, you are into a very capital-intensive, long-term investment capital situation. With that kind of productive capacity you are not going to make it. Is that accurate? I don't know if it is or not.

Mr. **Feller**. We would not argue with that.

Mr. **Bailey**. It would seem to be rather commonsense. And once the market penetration or market share has been increased and once you have an environment where you can buy and sell and ship and import like this, what really is going to happen is that you are not going to find the cost, you are not going to have to worry about dumping at all because you are not going to have any dumping.

You are going to have very nice and warm and profitable prices charged for Japanese products. Isn't that exactly what you are going to have?

Mr. **Feller**. I think that is a fair conclusion.

Mr. **Bailey**. And I think that we are talking about market penetrations now in this country in the vicinity of, well, with the last few months, from what, 20 some percent, 30 percent, going higher, maybe.

If that holds up permanently, we all know what is going to happen.

I will give you just one small example. You quoted in your statement, the Armed Services Panel on Defense Industrial Bases.

I want to tell you I was one of the very proud authors. I was on the Armed Services Committee and helped to write that report. I was responsible for pushing the issues with the chairman of that special ad hoc subcomittee, Dick Ichord from down in Missouri, a good friend of mine.

I was very intent on pushing the capital formation portions and whatnot, and some of the serious shortages and problems we have with special minerals, for example, in that area. I am very proud of that.

And also the manpower part of it, which I failed to discuss with the last panel that was here. In that vein, to give you an example of how serious this problem can be, we are building a very high technology XM-1 main battle tank in this country, as you may well know.

Just one little procurement item, we were trying to get hold of a very, very high translucency high quality glass that has to be used to fabricate bulletproof firing ports for that tank.

We couldn't find them in this country. That would be hell, wouldn't it? You go out there and build yourself a tank and the tanks blind, because you can't in your own country come up with a simple, little thing like enough quality glass, because all the glass is float glass.

You know where it comes from? Comes from Belgium, comes in from Europe. It has been subsidized glass literally, sold the American market out from under us in this country.

I want to compliment you, I don't know what to do about it. What suggestions would you make? You know, you mentioned the national security implications of some of these things I have been a big advocate of that.

Isn't that sort of protectionist, too? Don't you have a problem with that, or do you maintain some kind of international standard where you say each nation has a right to a primary capacity or percentage of market in primary goods in its country?

Mr. **Carlisle**. May I respond in a very general way?

Mr. **Bailey**. Yes. That is a real problem. We wrestle with that on the committee now.

Mr. **Carlisle**. Obviously, it seems to me that a national defense standard or a national mobilization base standard, if not carefully drafted, could be used for protectionist purposes and certainly would be attacked as such.

I don't have it in front of me, but I think I am right in saying, Mr. Bailey, that, first of all, the right of countries to maintain industries for their national defense is acknowledged under the rules of the GATT.

What I think we are talking about here is not making this necessarily an overriding consideration to be used in all cases, but saying at least let's look at it, particularly in the case of some of these very basic industries of ours. Let's look at it on what it seems to me is the commonsensical premise that the United States, being the United States, and having the responsibilities in the world that it has, has to maintain certain industries.

Hopefully, we can maintain those industries without resort to escape clause actions and so on.

I think of some of the things we have been talking about here this morning, about making a fairer competitive battle. If some of those things can be done, I think we are going to see less resort to the escape clause. But in the final analysis, yes, I would say that in something like the steel industry or the ball bearing industry, we have to have some capacity there.

Mr. **Bailey**. I just suggest that because I have wrestled with this problem, and I really don't know what to do about it. To maintain a certain percentage on a national defense standard because of the complexity of what goes into modern weapon systems. You know, your tentacles reach so far, your definition becomes so broad, you really have to be cautious. But what really burns is that in the name of free enterprise, which I think is obviously the most efficient approach we can take to resource allocation, these distortions by foreign policies that don't lend themselves to what the word, you know, the optimum productivity standards and investment standards should be worldwide.

That is the one that really gets at you. Again, I want to thank you for an excellent statement.

I really agree with the chairman's comment about specificity of it. I think it really helps. Very succinct.

I would like to get together with you and work on some reasonable changes that can perhaps work on some of these problems.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Very well done.

Mr. **Carlisle**. Thank you, Mr. Chairman.

Mr. **Nehmer**. Thank you, Mr. Chairman.

Mr. **Feller**. Thank you, Mr. Chairman.

Chairman **Gibbons**. We will take the next panel consisting of Mr. Cunningham, Mr. Verrill, and Mr. Hemmendinger. Then we will break for lunch and come back at 2 o'clock. Mr. Burns of SCM Corp. will be the first witness after lunch.

Welcome, gentlemen. We are glad to have you here. I hate to treat any group of lawyers preferentially, but, Mr. Cunningham, you are the first on the list so we will allow you to proceed first.

STATEMENT OF RICHARD O. CUNNINGHAM, MEMBER OF THE LAW FIRM OF STEPTOE & JOHNSON, WASHINGTON, D.C.

Mr. **Cunningham**. My name is Richard Cunningham, I am a member of the firm of Steptoe & Johnson. I am here to present my own views. They shouldn't be taken as the views of Steptoe & Johnson or, particularly, any client which the firm represents.

I want to briefly deal with three points. One deals with I think what is a growing resource need in the treatment of the trade laws.

Second is a serious loophole that has developed in the antidumping law.

Third is an area, trade with nonmarket economies that really in my view needs total reform of our laws.

First, concerning the need for additional resources at the Commerce Department. Two years ago the Congress transferred to Commerce from the Treasury Department the enforcement of the pricing and subsidy aspects of the antidumping and countervailing duty laws.

Improvement in that enforcement has been dramatic. Commerce is better organized than Treasury was. It is more innovative in its procedures in terms of investigative teams and computerization of antidumping investigations. It is better staffed, especially in the accounting area, and it has a commitment to the fair trade objectives of these laws which, in my view, very frankly, the Treasury Department lacked.

Unfortunately, I fear we are headed for some real trouble, however, because the workload of enforcing these laws is increasingly outstripping the Department of Commerce's resources.

There are three reasons for this.

First, we are in a recession now. Recessions mean more trade cases. It is that simple. When an industry's market shrinks, it becomes more important for that industry not to lose a share of it to unfairly priced competition. A specific and very important aspect of this, I think, is going to be a major flood of steel cases very soon.

Second, the annual review process under section 751 represents a continually increasing burden on the Commerce Department's resources. Mind you, I am not saying that is a bad idea. Those 751 reviews are very important procedural innovations in the new law. They have worked very well, particularly for U.S. industries, because they give the U.S. petitioner a chance to get into that duty assessment process, where it before had no chance. It was a closed door proceeding between the Treasury Department and the foreign producer. But those reviews create a substantially expanding burden every year. As we get more dumping findings and countervailing duty findings on the books, that workload from those 751 reviews is just increasing expontentially.

And the third reason that we are going to have an increasing burden on the Commerce Department's resources is the proliferation of interlocutory appeals to the Court of International Trade. That is a bad idea. It is a bad idea that got into the law, and, indeed, I supported it at the time in the Trade Agreements Act.

Chairman GIBBONS. Would you repeat that? I was concentrating on something else and missed it.

Mr. CUNNINGHAM. In the Trade Agreements Act, this Congress, and I supported it at the time, set up the possibility of appeals to the Court of International Trade of interlocutory decisions: preliminary determinations, procedural determinations of all sorts by the Commerce Department. And lawyers, being what they are, and heaven knows, I am one of them, when they have got a right to appeal something and they have lost an issue at the administrative agency, by George, they take advantage of the right to appeal. And they have been taking advantage of it. And it has placed a tremendous burden on the Commerce staff, getting the records together and supporting the Justice Department lawyers, or the Commerce lawyers, arguing those appeals.

In my experience, it has been to no good end so far. There really hasn't been much coming out of those appeals that has been very successful, and it has adversely affected and is beginning increasingly to adversely affect the effectiveness of Commerce Department investigative procedures, because it is diverting manpower from that. The strains are already showing at the Department. Whenever deadlines are postponable or waivable, there is a growing tendency to postpone or waive them in the administrative proceedings. In a few, but an increasing number of cases, Commerce is resisting the demands of U.S. petitioners for additional investigation in a case or for more thorough verifications.

That is a point I want to underline. Where the staffing, and thus the investigation, that Commerce is able to devote to a case is inadequate, it is the petitioning U.S. industry that comes out the loser. An inadequate investigation 9 times out of 10 means that the U.S. industry gets either no duty or gets less duty than it would have gotten if Commerce had really been able to go into the situation.

I propose in my testimony two remedial steps. First, a substantial increase in the Commerce staff. Second, a repeal of the provisions permitting interlocutory appeals from preliminary Commerce determinations.

The second issue I want to touch on briefly is to call to the attention of this committee a serious loophole that has developed in the antidumping law. To explain this loophole very briefly, let me give you an example. Suppose that the Commerce Department investigates imports of fishing reels from a particular country, and it finds that those fishing reels are being dumped into the United States, and a dumping finding is entered. It is now possible, the way Commerce interprets the law, for the foreign exporter that has been found to be dumping the fishing reels to totally avoid the effect of a finding simply by selling reels and rods, together, for a single lump-sum price. Dumping the reel at the exact same price it was dumping it before, but selling it in conjunction with a rod for a single price. Commerce takes the position that, even if it is as easy as can be to allocate the total price between the rod and the reel, they are forbidden by law to make that allocation because the importation is no longer in their interpretation of the law a reel, but a rod and reel combination.

I submit that makes no sense, and it has got to be changed. My testimony proposes what I think is the straightforward way to do it, by means of a new subsection 18 to section 771 of the Trade Agreements Act. That would simply make it clear that, whenever it is possible to do so—and in some cases it won't be, in some cases the two products may be jumbled together so much it is not possible to separate out the price and make meaningful allocation—but wherever it is possible to do so, Commerce, under my proposal, would be required to allocate the total price of the two products between the dumped product and the accompanying product.

I think it is a simple change but I think it is a change that has to be made. And it is already becoming a problem in cases. And I have laid out specific cases in my written testimony where it is becoming a problem.

The last subject with which I want to deal briefly is the laws dealing with imports from nonmarket economies. That area is a mess. I urge you to support the approach taken in the Heinz bill which has been introduced in the Senate as S. 958. It is a breath of fresh air.

I have had the great misfortune as a practitioner to have been involved in nonmarket cases under both the antidumping law and section 406. Neither works. Neither produces fair or predictable results. And, most important in my view, neither creates meaningful rules for pricing in the United States for imports from nonmarket or Communist countries. That, in my view, is the real problem. The real danger from imports from those countries is that they may not be priced on any economically rational basis. Yet we don't have a standard now that is at all meaningful as to what is fair for pricing of nonmarket economy imports.

Commerce will not apply the countervailing duty law for very good reasons. A subsidy doesn't have much meaning in a state where the whole economy is controlled by the government.

When Commerce tries to apply the antidumping law, it either looks to a surrogate producer—and in such cases the entire result of the case turns on one issue; that is, which surrogate producer do you choose? And Commerce can make the case come out any way it wants to—or, if there is no surrogate producer, we go into what I can only describe as cloud cookoo land, which is the construction of what it would cost to build the product, to manufacture the product in question, in a country where they don't even manufacture the product. This approach to the antidumping law doesn't make sense. It doesn't allow U.S. industries to know when they have a case or when they don't. It doesn't allow a foreign exporter in a nonmarket economy which may want to comply with U.S. laws to know how to do it. It has to be changed.

I think the Heinz bill provides a clear and fair result, a fair approach to this problem, and a liberal one. And I want to close by emphasizing that I am not advocating and would not advocate that we adopt laws that preclude trade with nonmarket economies or with the Eastern bloc. That trade has advantages for the United States. It can have economic advantages, and it can have political advantages for us. But it must be done on a basis that doesn't put competing U.S. industries in a position where they can't compete because the pricing is irrational.

I think the Heinz bill does it. I support that approach, and I urge this committee to support that approach.

[The prepared statement follows:]

STATEMENT OF RICHARD O. CUNNINGHAM, MEMBER OF THE LAW FIRM OF STEPTOE & JOHNSON

TOPICAL OUTLINE OF STATEMENT

Witness: Richard O. Cunningham.
Address: 1250 Connecticut Avenue NW., Washington, D.C.
Title: Member of the Law Firm of Steptoe & Johnson.

Representing: The views presented by Mr. Cunningham are entirely his own, and do not necessarily represent the views of either Steptoe & Johnson or any client of the firm.

Purpose of statement: To suggest certain measures needed to improve the enforcement of the U.S. trade laws, especially the Antidumping and Countervailing Duty Laws.

Problem: The Commerce Department does not have adequate personnel to handle the demands which the Antidumping and Countervailing Duty Laws are now putting on that agency. This problem is likely to become much more acute in 1982, when a substantial increase in the volume of trade cases—not just in steel, but across the board—can be anticipated.

Proposed remedies: (1) A substantial increase—on the order of 40 percent to 50 percent—in the staff of the Department's Import Administration. (2) Repeal of provisions in current law which permit interlocutory appeals of Commerce Department determinations other than final determinations.

Problem: The Commerce Department today follows a rule, inherited from the Treasury Department, that prevents it from imposing antidumping duties upon an imported product which is sold with another product for a single, lump-sum price. This is enabling foreign exporters to evade dumping findings simply by selling the dumped product and another product together for a single, lump-sum price.

Proposed remedy: Amendment of Section 771 of the Antidumping Law to require the Department to determine the portion of a lump-sum price allocable to the dumped product.

Problem: Application of the trade laws to imports from non-market economy countries is currently irrational, unpredictable and unworkable.

Proposed remedy: Enactment of S. 958 or similar legislation, establishing a clear standard of pricing for non-market economy imports.

STATEMENT

My name is Richard O. Cunningham. I am a member of the law firm of Steptoe & Johnson. I have been engaged in the practice of international trade law for more than a dozen years. I am grateful for the opportunity to appear here today at the invitation of the Subcommittee staff, and I want to emphasize that my testimony reflects views which are entirely my own. I am not appearing today on behalf of my firm or of any of any client of the firm.

There are two principles underlying the testimony which I will be giving today. First, I feel stongly that the Antidumping and Countervailing Duty Laws are important and deserve to be enforced fairly and effectively. Under our capitalist, free-market system, we tell our businesses that they will succeed if they are efficient and productive. This necessarily implies that there are rules of fair conduct in the business world which, if followed, produce that result. If we are to have strong industries and productive workers in this country, we must be able to assure them that they will not be deprived of the benefits of their efficiency and productivity by losing out to dumped or subsidized foreign import competition. My basic premise, therefore, is that these laws are important enough for us to devote the resources necessary to effective enforcement.

The second basic principle in my philosophy of trade law enforcement is that the trade laws should operate clearly, objectively and non-politically. Rules of conduct should be established which are understandable and which can be administered effectively. A foreign exporter should be able to understand how to price its products fairly in the U.S. market. A foreign government should be able to understand what practices constitute countervailable subsidies and what practices do not. A U.S. producer should be able to make a judgment as to whether it should or should not bring a trade law proceeding. Finally, and most important, the result of a proceeding should be determined by the objective application of the statutory criteria to the facts, and not by political or diplomatic influences.

The past two years have seen very substantial improvements, in my view, in the enforcement of the Antidumping and Countervailing Duty Laws. The Trade Agreements Act went a long way toward clarifying and objectifying the standards, especially in the countervailing duty area. The Commerce Department has, in my judgment, proven to be a more vigorous and effective enforcer of the laws than was the Treasury Department. In particular, the investigative procedures which the Department has adopted—verification by investigative teams in all cases, increased use of accounting expertise, and a more effective administrative organization—have made substantial strides toward what I regard as the right way to enforce these laws.

There remain, however, a number of trouble spots. I propose to touch on three of them today.

A. The need for an increase in the Commerce Department staff

Every time I have appeared before this Subcommittee over the past several years, I have urged that the resources devoted to enforcement of the Antidumping and Countervailing Duty Laws be increased—more funding, more personnel. I was therefore pleased with the increases in both personnel and funding which have occurred since the assumption of responsibilities by the Department of Commerce. Indeed, I have some hesitancy in calling once again for further increases, especially in view of the budget constraints under which all Federal departments must now operate. Unfortunately, I see serious troubles ahead if the staff of the Import Administration is not substantially increased. I say this for several reasons:

First, the increased resources devoted by the Commerce Department to enforcement of these laws have been at least fully offset by the much greater administrative demands of the 1979 legislation. In particular, the proliferation of interlocutory appeals and the much greater than expected workload of Section 751 review proceedings is already straining the Department's resources to the limit.

This strain is occurring, moreover, despite the fact that there have not been very many new antidumping or countervailing duty cases filed in the past eighteen months. Certainly, compared with the 1977-78 period, the influx of new cases has been relatively modest. What the Department has found, however, is that the annual reviews under Section 751 are almost as time-consuming as full-scale antidumping or countervailing duty investigations. That is as it should be, because now U.S. industries are able to contest arguments which under the old system were raised by the foreign exporters and decided by the Treasury Department in essentially ex parte procedures. Nevertheless, this has meant that such reviews have taken a large and increasing portion of the Import Administration's manpower.

The Department has been lucky so far, in terms of the absence of large-scale new case filings. That is about to change, for several reasons:

1. Downturns in the economic cycle normally lead—with some lag time—to a substantial increase in filings of antidumping and countervailing duty proceedings.
2. In this economic cycle, we can anticipate an especially large number of countervailing duty cases, owing both to foreign governments' increasing subsidization of their exporting industries and to the fact that the domestic subsidy provisions of the 1979 Act make more of those subsidies subject to countervailing duties.
3. Finally, there is of course the new round of steel cases.

On top of all this, the Subcommittee must keep in constant focus the fact that the number of Section 751 annual reviews keeps expanding continuously. Indeed, this round of new antidumping and countervailing duty cases will create a new and broader layer of annual reviews which will have to be conducted year after year in the future.

In short, we are rapidly approaching a staffing crisis at the Import Administration. When that crisis comes, the losers are likely to be the U.S. petitioners in many cases. I can tell you, based upon more than a decade of practice in this area, that thorough investigations benefit the petitioner in 90 percent of the cases, and inadequate investigations normally lead to negative determinations or to under-assessment of duties. I therefore strongly urge that two steps be taken.

First, the staff of the Import Administration should be increased substantially, on the order of 40 percent-50 percent. I realize the budgetary problems, but such an increase is absolutely essential if the Department is to enforce these laws effectively. Moreover, a significant part of the cost of this staffing increase is likely to be offset by increases in the amount of antidumping and countervailing duties collected through more thorough investigations.

Second, I would urge the repeal of all provisions authorizing review of interlocutory Commerce Department determinations. To date, such appeals have not been productive. Their principal impact has been to place severe burdens on the staff of the Import Administration—in the form of preparing the administrative record for court proceedings, working with counsel, appearing as witnesses, etc. It would be much more efficient to reserve all appealable issues for a court contest after the Department's final determination. If necessary, a provision could be adopted pursuant to which the International Trade Commission would stay its injury proceedings pending the outcome of an appeal of a final Commerce determination.

B. Congress should close a major loophole in the antidumping law, by making it clear that a dumping finding cannot be evaded by selling the dumped product in conjunction with another product for a single, lump-sum price

In the context of the current Section 751 annual review of the antidumping finding in Large Power Transformers from Japan, the Commerce Department has to date failed to close a major loophole in the Antidumping Law which it inherited as a result of a 1977 ruling by the Treasury Department. In essence, the Department is permitting the Japanese exporters to evade the antidumping finding, simply by selling large power transformers to U.S. customers in conjunction with another type of electrical equipment for a single, lump-sum price. The loophole thus created is of immense potential significance, and should be closed immediately.

Let me give you a brief history of this issue, based upon my experience as counsel for Westinghouse Electric Corporation, the petitioner in the Large Power Transformer cases. Large power transformers are never used in isolation. Rather they are used in conjunction with such other electrical equipment as generators, rectifiers, substations, and the like. In many cases, it is equally convenient for an electric utility to purchase each piece of equipment either separately or as a package with other pieces of equipment. During the original antidumping investigation in the early 1970s, the Japanese exporters tried to exclude from the scope of the case what they referred to as a "rectiformer". As it turned out, a "rectiformer" was simply a large power transformer sold in conjuction with a rectifier. Westinghouse was able to demonstrate that, even where the rectifier and transformer were sold together for a single, lump-sum price, any competent electrical engineer could accurately allocate that overall price between the rectifier and the transformer. The Treasury Department therefore ruled against the Japanese, holding that transformers sold with rectifiers were properly included in the dumping investigation and would be subject to any finding of dumping.

More than five years later, the Japanese raised the issue again in connection with assessment of duties under the antidumping finding. By this time, there was a new—and, in my view, much more importer-oriented—regime at the Treasury Department. Once again, Westinghouse submitted proof that the price of the transformer can be accurately ascertained even when the transformer and rectifier are sold together for a single, lump-sum price. To our alarm, Treasury reversed itself and ruled in favor of the Japanese. This was not because our evidence was inadequate. To the contrary, Treasury (and Commerce today) does not deny that these transformers are properly classifiable in the "class or kind of merchandise" as other large power transformers. Nor do they dispute that the price for the transformer can be accurately ascertained by an electrical engineer in a lump-sum pricing situation. Rather, the Treasury position—which apparently remains the Commerce Department position today—was that the Antidumping Law forbids as a matter of law the imposition of dumping duties on a product which is sold in conjunction with a non-dumped product for a single, lump-sum price. In other words, no matter how readily the price of the dumped product may be separated from the price of the other product, the current administrative interpretation is that it is forbidden as a matter of law to make any such separation of the lump-sum price into its components.

The impact of this ruling has been just what one would expect. It has been easy for the Japanese exporters to persuade U.S. purchasers to allow them to quote a single price covering the rectifier and the transformer together. After all, it is in the purchaser's interest to obtain a lower overall price, even if it is a dumped price for the transformer portion. Accordingly, low-priced imports have now taken over half of the U.S. market for transformers used in conjunction with rectifiers. Under the current rule applied by the Commerce Department, there is nothing we can do about this.

Even more ominous is recent evidence that other foreign suppliers of electrical equipment have caught on to this loophole, and that they are trying to extend it to equipment combinations other than rectifiers and transformers. European producers, for example, are beginning to quote prices for complete substations or power plants—including dumped transformers—in an effort to utilize the loophole created by the "rectiformer" decision.

I think you will agree with me that this interpretation of the Antidumping Law creates a literally huge loophole. All that any foreign exporter need do to escape the impact of a dumping finding as to product X is to sell product X and product Y together for a single price. In a procurement situation, the U.S. purchaser will naturally be eager to cooperate by buying two products at the same time, because it may mean a substantial savings to him by taking advantage of the dumped price for one of the components. But this loophole would also be readily applicable to many consumer items. Suppose, for example, that the Department of Commerce has found that fishing reels have been dumped. The foreign manufacturer could easily avoid that finding by selling reels and rods together for a single, lump-sum price.

This loophole simply has to be closed. I urge this Committee to amend the Antidumping Law by adding the following new subsection (18) to Section 771 of the Trade Agreements Act of 1979: "(18) Merchandise Sold in Combination.—Where merchandise of a class or kind as to which the administering authority has made public an antidumping duty order as provided for in Section 736(a) is imported in conjunction with, in assembly with or accompanied by other merchandise, and where no separate price is charged for the merchandise covered by the antidumping duty order, the administering authority shall determine the portion of the import price properly allocable to the merchandise covered by the antidumping duty order, unless the administering authority determines that it is not possible to make such an allocation."

The phrase "not possible" has been selected deliberately, in preference to such alternatives as "not practical" or "not feasible", in order to make it clear that ingenious or complex combinations of merchandise will not be effective as a means of evading the Antidumping Law.

C. Inadequacy of laws dealing with imports from non-market economy countries

No rational observer could be satisfied with the current state of U.S. trade laws dealing with imports from non-market economies. Such imports, of course, present major potential problems, stemming from the fact that their system simply does not mesh well with ours. As a consequence, imports from non-market countries may be priced at levels which do not reflect what a free market producer would regard as economic reality.

Despite the obvious potential problems posed by such imports, our present laws are totally inadequate and, indeed, arguably worsen the situation. The briefest summary of the present situation makes clear the inadequacy of current legislation:

Countervailing Duties. Totally inapplicable. The Commerce Department takes the position that the Countervailing Duty Law cannot be meaningfully applied to imports from non-market economies.

Antidumping. Applicable to non-market imports, but totally unpredictable and subject to diplomatic and political vagaries. In most cases, the result of the case depends on which "surrogate producer" is chosen. Where no surrogate producer is available, Commerce embarks upon a bizarre exercise of constructing what it would cost to manufacture the merchandise in question in an imaginary plant located in a country where such merchandise is not produced. Whatever method is used, the Commerce Department can literally reach any result which it desires in any given case.

Section 406. This provision has proved totally ineffective. No one has ever obtained relief. My experience in the *Russian Ammonia* case convinced me that the result of any proceeding has nothing whatsoever to do with injury, economic facts or anything set forth in the statute, but rather that political and diplomatic factors override all other considerations.

This is simply not the way to run trade policy, much less to establish rules governing the conduct of non-market sellers in the United States. Exporters in non-market economies can have no idea whatsoever as to when and under what circumstances their sales may be subject to attack under any of these laws. Similarly, U.S. industries aggrieved by such imports can make no realistic judgment as to whether a case which they might bring would have any prospect of obtaining relief. In short, it is time for a change.

I support the general principles underlying the Heinz bill (S. 958), which would create a pricing standard for non-market economy imports which would be clear and realistically enforceable. Under that proposal, a standard of "artificial pricing" would be created, which would require a non-market economy exporter to sell in the United States at a price no lower than the lowest price charged by importers of free-market merchandise. This is not only a clear standard. It is, in my judgement, a fair standard. Let me deal briefly with what I understand to be objections which have been raised to the Heinz proposal:

On the one hand, I understand that some U.S. industries have argued that this standard is too lenient. They point out that a producer in a nonmarket economy may not be as efficient as a producer in some free-market country, and should thus be held to a higher pricing standard. To me, this is mere theorizing. The very nature of costs in a non-market economy is such that we will simply never know whether a given producer is more or less efficient than a free market producer. Under such circumstances, the legislation gives non-market producers the "benefit of the doubt", but does so in such a way that U.S. industries are adequately protected. If other imports—from market economy countries—are sold in the United States at prices at least as low as those charged by the non-market economy seller, it seems to me that it would be difficult to argue that the non-market imports are depressing the U.S. price level. Indeed, a trade action brought against the non-market producer would still leave the equally-low-priced free market imports as a factor causing at least as much injury in the marketplace.

I have also heard representatives of U.S. producers argue that the Heinz bill would not deal with the threat of sudden surges of imports from non-market economy countries. Once again, I disagree. Procedures under S. 958 would be the same as those under the Antidumping and Countervailing Duty Laws. Those procedures include a provision for invoking early and retroactive relief upon a determination of "critical circumstances". This is, in my thinking, sufficient protection against surges from non-market countries. I might add that I have great difficulty in pointing to any case in which a "surge" of this nature was a factor in a non-market import proceeding. It is my strong view that pricing—not surges in volume—is the real problem with imports from non-market producers.

Finally, I have heard representatives of non-market economies complain that S. 958 is too restrictive, because it does not take into account the possibility that a non-market economy may genuinely be more efficient and have lower costs than producers in free market countries. This argument does not impress me. As I indicated before, I do not believe that we will ever be able to find out whether any given non-market economy producer is more or less efficient than a competitor in a free market country. Even if one were to analyze the "factors of production" (degree of automation, number of hours of labor per unit, amount of raw materials per unit of production, etc.) as contemplated by the Commerce Department's current phantasmagorical "constructed value" approach, I am convinced that we get no meaningful answers. Where the non-market economy producer is highly automated, it may well be that the State has decreed an artificially high level of automation in order to achieve some political goal.

If the same enterprise were located in a free-market country and if the State had artificially supported the investment needed to obtain the high degree of automation, we would undoubtedly impose countervailing duties to offset the assistance from the State. The only reason we do not do precisely the same thing in the case of non-market economy imports is that the State controls all aspects of the economy, thus making application of the Countervailing Duty Law impractical. In short, the question whether a non-market producer is more efficient is an unanswerable question. And if that is more efficient, it may be the result of subsidies. For us to accord to non-market imports the presumption that they are at least as low in cost as the lowest-cost free-market imports is an eminently liberal trade policy.

I therefore urge this Subcommittee to support the basic approach set forth in S. 958. Action now is important, in view of the growth over the past several years in trade with non-market countries, and the concomitant increase in the number of potential dislocations caused by imports from those countries. I firmly believe that we should not discourage trade with the Socialist world. However, I believe that such trade should be conditioned on their adhering to pricing standards which (although liberal) do not place U.S. producers in a position of being unable to compete.

I wish to thank the Subcommittee for giving me the opportunity to present these views. I would be happy to answer any questions on these or other subjects.

Chairman **Gibbons**. Thank you, sir.

Our next witness is Mr. Verrill.

STATEMENT OF CHARLES O. VERRILL, JR., PARTNER, LAW FIRM OF PATTON, BOGGS & BLOW, WASHINGTON, D.C.

Mr. **Verrill**. Thank you, Mr. Chairman. My name is Charles Verrill. I am with the law firm of Patton, Boggs & Blow. I am pleased to be here this morning. My testimony is based on my practice in trade matters.

However, the views that I will express are entirely my own and do not reflect those of my firm or any clients of our firm.

I would like to start my comments on a positive note. This committee worked long and hard in 1979 to accommodate the antidumping and countervailing duty laws to the new agreements on countervailing duty and antidumping that had been negotiated in Geneva.

A great deal of effort went into that drafting process. And in my judgment, overall, the expenditure was very much worth it. Despite some flaws that I will discuss later and that other people have discussed, it is my view that the revised procedures, particularly in the new law, are working and working quite well.

For example, the new rules on limited disclosure of confidential information pursuant to protective orders have resulted in more meaningful analysis and dialog between the Commerce Department and attorneys representing both domestic and foreign interests.

I think the new deadlines in the law have generally served to streamline the process, and to rectify the old problems of delays and bottlenecks.

Commerce has, in my judgment, significantly improved the investigation process. Verification of information submitted has been improved. The proceedings are considerably more open than they ever were before.

As Mr. Cunningham has so aptly described, the cases are much better managed. In that context, I agree entirely with Mr. Cunningham's recommendations on staffing of the Commerce Department to adequately take care of trade cases.

This committee wrote in the 1979 Trade Act report that dumping and subsidization are "pernicious" trade practices that have an adverse effect on U.S. industry.

I believe that these two laws and the procedures that have been evolved are the best way to take care of those pernicious practices.

But without adequate staffing at the Commerce Department, neither lawyers nor U.S. industry will have the necessary confidence that those laws can be made to work, as I believe they deserve to be.

There are, of course, some facets to the 1979 law that, after 2 years of application, probably deserve changing. I believe the comments on interlocutory appeals are extremely well taken.

No, I think these appeals probably are wasteful of time and energy, and do complicate the resolution of cases.

There is another aspect of the 1979 changes that I think also ought to be changed.

In the 1979 act the practice was adopted of requiring an injury determination by the International Trade Commission at the very outset of an antidumping or countervailing duty proceeding.

This is a preliminary injury determination to be completed within 45 days by the ITC, and had as its principal purpose, as I understand it, conformity to the codes which require a preliminary finding of injury prior to the imposition of provisional duties, and also the weeding out of frivolous cases; to be a deterrent, if you will, to filing of cases that are not meritorious.

It was claimed, for example, that prior to 1979, petitioners could file cases even if there was obviously no injury, with one result that there would be disruption of trade for the period of the investigation of the subsidy or dumping practices.

And it wouldn't be until the injury determination was made that the disruption of trade would be ended, if, in fact, no injury was determined to exist. While those are good objectives, I believe that the 1979 changes went too far.

As the practice has developed since 1979, the 45-day preliminary determination period by the ITC has evolved into one of the most complex and costly stages of the entire proceeding.

Having been involved in those cases, I know that lawyers on the domestic side, knowing the consequences of losing, throw every resource into the effort. Lawyers for the import side, knowing that the opportunity is present to terminate the investigation, do likewise.

Thus, it has become a critical stage in the proceeding and one that is compressed into an extremely complex time period. I think that this development has resulted in much of the concern that trade cases under the antidumping or countervailing duty laws have become too expensive.

I would recommend that this committee give consideration to changing the law to provide that the ITC be required to make an injury determination only in those cases where the Commerce Department, after review of the evidence submitted, concludes there is no reasonable indication of injury.

I think this modification of the law could be done in a way that would be consistent with our code obligations. The procedure was used under the 1974 act, and I believe it would be a sufficient deterrent to frivolous cases. At the same time, I think it would enormously simplify and make less costly access to these trade remedies.

That summarizes my testimony.

[The prepared statement follows:]

STATEMENT OF CHARLES O. VERRILL, JR., PARTNER, LAW FIRM OF PATTON, BOGGS & BLOW

Mr. Chairman and members of the subcommittee, good morning. I am Charles Owen Verrill, Jr., a partner in the Washington law firm of Patton, Boggs & Blow. It is a privilege for me to have been asked to testify before this Subcommittee on the U.S. antidumping and countervailing duty laws.

I have had an active trade practice for a number of years, and have advised clients and handled cases both before and since the procedural and substantive changes in the antidumping and countervailing duty laws that were incorporated in the 1979 Trade Agreements Act. I would like to share with you a few of my observations on the operation of those laws from the perspective of a private practitioner.

The enormous expenditure of time and energy which went into the drafting of Title I of the Trade Agreements Act of 1979 by this Committee and the Senate Finance Committee has resulted in a body of law which constitutes a significant improvement. The revised procedures particularly are working, and working quite well. For example, the new rules on limited disclosure of confidential information pursuant to protective orders have resulted in more meaningful analysis and dialogue between Commerce and attorneys representing domestic and foreign interests. At the same time, the new deadlines for completing cases have generally served to streamline the administrative process and to rectify the old problem of inordinate delays and bottlenecks. Despite these stringent time frames, Commerce has improved the investigation process: verification has been improved, proceedings are more open, and cases better managed.

While the substantive changes to the antidumping and countervailing duty laws were largely limited to those necessary to conform to the MTN Codes, the more specific definitions of key terms (such as domestic subsidy) in the 1979 Act have been quite helpful. Moreover, the legislative reports have clarified the Congressional intent in the administration and interpretation of these laws. For example, these reports have provided important guidance to Commerce, the International Trade Commission and practitioners on both substantive and procedural issues.

However, as with any major statutory revision, there are problems which have suffered in the administration of the antidumping and countervailing duty laws. These problems were not foreseen at the time the Trade Agreements Act was being formulated, but have emerged in the processing of cases under the new procedures.

Let me describe a concrete example. The 1979 amendments provide that in all cases where an injury finding is required, the ITC must make a preliminary injury determination 45 days after a petition is filed. The purpose of this preliminary test was to weed out the totally unmeritorious cases. The "resaonable indication" standard was supposed to be a modest threshold, requiring only a prima facie showing to survive.

The legislative reports also clearly indicate, however, that Congress intended the ITC to conduct its investigation "in as thorough a manner as possible using the information available within that time period, and [to] provide interested parties a reasonable opportunity to present their views."

The practical result of this change has been that the 45 day period is now one of the more critical (and costly) stages in this entire proceeding. During this time, the ITC must compile and distribute a producers' questionnaire to all the companies comprising the "domestic industry." The questionnaire, which requests very detailed cost and pricing information, as well as other economic data, must be completed, returned to the Commission, and analyzed before the decision on "reasonable indication" of injury is made. The Commission customarily holds a conference (usually conducted by the staff) during which the domestic parties must be prepared to present a convincing case on the extent of injury—lost sales, reduced production, declines in sales and profits, price suppression, and similar information. Lawyers for domestic parties do not like to lose at this stage (or any other stage) and usually throw great efforts and resources into prevailing. And, lawyers for the importers, because of the opportunity to stop the entire case, do likewise.

Thus, it has become clear that the preliminary determination is an absolutely critical stage of the proceeding since petitioners cannot expect an automatic affirmative determination. Consequently, it is necessary for all the parties—and the Commission—to commit substantial resources at this "preliminary" stage. Basically, the 45 day stage has taken on nearly all the characteristics of a final injury determination in an extremely compressed time period.

I do not believe that Congress intended such a result. Nor do I believe that this procedure is necessarily mandated by Article 5(b) of the Antidumping and Countervailing Duty Codes. That Article does state that provisional duties cannot be levied until there has been a positive finding that there is sufficient evidence of injury. I think this requirement can be met with the much simpler procedure that was in §201(c)(2) of the Antidumping Act prior to the 1979 amendments. You will recall that under that provision, if the Secretary of the Treasury at the outset of an investigation, concluded that there was "substantial doubt" whether a U.S. industry was being injured based on the evidence in the petition, then the case was referred to the ITC. The ITC was then required to determine (within 30 days) whether there was "no reasonable indication" of injury. The old procedure did, therefore, require consideration of the evidence of injury at the very outset and did provide a method to screen out the frivolous cases.

I believe that if this procedure were in the law today, it would better serve all parties by reducing much of the cost involved in antidumping and countervailing duty proceedings, while also preserving the built-in statutory safeguards and fulfilling our international obligations.

I would also like to address another subject with which this subcommittee has great familiarity, and that is adequate staffing of the International Trade Administration. Both the House and Senate reports on the Trade Agreements Act expressed their expectation that adequate resources would be allocated to enforce the antidumping and countervailing duty laws. And, the Administration is committed to strict enforcement of these laws.

I am particularly concerned that the efforts to trim the Federal bureaucracy may undermine the effective operation of these laws, which presumed that the staff support would be available. I am sure you realize the importance of these laws to U.S. industry—the legislative report on the Trade Agreements Act describes subsidies and dumping as "two of the most pernicious practices which distort international trade to the disadvantage of United States commerce." If the private sector is to have faith in the U.S. trade laws, it must be convinced that they do, in fact, work.

Of course we all support the effective use of these laws—but, without a commitment of resources and personnel by the Administration to the day to day enforcement of the statutes, I do not believe that U.S. business will have confidence in their efficacy.

Finally, the downturn in the U.S. economy will put pressures on both the private and public sectors. As the ITC has noted several times, it is precisely when U.S. industry is suffering through bad times that it is most vulnerable to unfair trade practices such as subsidies and dumping. A depressed domestic economy will also generate calls for protectionist legislation and restrictive actions by the Executive Branch. The wisest course in the long run is reliance on the existing trade statutes to address these problems. It is my hope that the Administration and this Congress will continue to improve those laws for the benefit of all.

Thank you.

Chairman GIBBONS. Let's see. Our next witness is Mr. Hemmendinger.

STATEMENT OF NOEL HEMMENDINGER, SENIOR PARTNER, ARTER HADDEN & HEMMENDINGER, WASHINGTON, D.C.

Mr. HEMMENDINGER. Thank you, Mr. Chairman. My name is Noel Hemmendinger, senior partner in the Washington law firm of Arter Hadden & Hemmendinger, with offices at 1919 Pennsylvania Avenue.

Like my friends, I am offering this testimony on my own behalf, and do not reflect the views of my partners or my clients.

I am basing my views on 25 years in the practice of trade law in Washington, 10 years before that in the Government.

I don't think I am unbiased, but I do offer you my views after considerable reflection, and in a disinterested spirit. My views are quite unconventional.

I think it is necessary to question many of the premises on which our trade laws and present trade policy are being executed, because I think the well-known problems will not be effectively dealt with unless those premises are reexamined.

I think after listening to all the testimony this morning that I may seem like a witness for the import side or foreign export side. That isn't my motivation. I am more concerned as an attorney with the process.

I feel that the results, whether protectionist or free trade, will in the end reflect the consensus of national policy.

I am perfectly philosophical if we protect the auto industry or any other industry. I am not arguing free trade versus protectionist ideology. But this committee is very concerned with the process and I think it's embarked on a road where it is very hard to turn back.

But it is necessary to stop and consider where it is leading. I consider that the codes and the GATT before it, and the provisions of the Trade Act of 1979, reflect the culmination of many years of efforts to establish and administer internationally accepted rules for fair trade.

I have a lot of respect for that endeavor and to the hard and conscientious work that has gone into it. Maybe it is ungracious to point out that they have brought new problems. But I think that that is what I have to do today.

I submit first that title I of the 1979 act, dealing with dumping and countervailing, has gone much too far in introducing into the administration of those laws the paraphernalia of litigation.

And second, that the laws against so-called unfair trade are not appropriate means, not the best means to deal with many of the trade problems, particularly as we have seen in the so-called big cases, and then with the nonmarket economy countries. Here there is considerable consensus, I think, among us attorneys. And finally, with the developing countries.

The extremes are found in the overly complex procedures, the excessive insistence upon a public record available to all parties, and excessive appeals to the courts.

As to appeals, I am happy to note that there is agreement among all of us here today, all of the lawyers here today. The administration of these laws has turned the execution of trade policy into litigation, with all of the problems of litigation that the bar and all interested citizens have been very much concerned about, when you consider the big antitrust cases, for instance, and other consequences of problem solving through litigation in the courts.

We are now involved in problem solving through litigation in trade policy, and we have to stop and begin to try to turn back, rather than to continue on that course.

This is not easy to do, Mr. Chairman. When you start producing new procedures, new appeals, new rights, recognizing parties' interests that were previously observers, et cetera, when you try to turn it back, you run into a ratchet effect.

You are fighting truth and virtue and vested interests. But this administration has been doing that in a lot of other areas. I think perhaps the committee should consider doing it in this one.

The answer, with due respect to my good friend, Mr. Cunningham, does not lie in adding ever more personnel to the ITA. It is already excessively bureaucratic. Throwing people at problems is a variant of throwing money at problems.

The answer, I submit, is in relaxing the overstringent procedures and letting in a little commonsense, with some consideration to cost effectiveness.

I know that the terms of the 1979 act resulted from very great displeasure in these Halls with the administration of the law under the Treasury Department. But you must remember that legislation is one thing, has its limitations, and administration is another.

Administration can sometimes remedy bad laws, but I think the opposite proposition doesn't apply. The pendulum has swung too far. And I suggest the committee give earnest thought as to how to swing it back.

I have set forth a whole series of proposals which I will run through briefly in order not to abuse your time. I agree about interlocutory appeals. I think that somehow the courts should be persuaded to remember that they are reviewing under different standards from Custom's practice, and not get quite so much satisfaction over finding some tiny defect in the record in the ITA or ITC.

I think disclosure of confidential information under protective order, here is the greatest collision, I am sure, with some of my friends sitting here today, has got to be limited, because, if you stop to think of what has happened to discovery in the Federal courts in the big cases, the well-known fact is that it is completely out of hand. Lawyers persuade themselves that what they can do, they owe their clients to do. It makes these very expensive and protracted, it means all of us are piling up huge mounds of paper to no end in our offices and in the ITA.

There has to be a judgmental determination, in my submission, as to when information under protective order is genuinely required in order to make a contribution to the determination that is constructive.

I know that there is an idea that Government servants can't be trusted to do their job unless somebody is constantly looking over their shoulders.

But we cannot practically apply that principle in other areas of the Government, and you can't do it here without excessive delays and paying too high a price.

Four, I think the administering authority should be encouraged to take some shortcuts where commonsense dictates. I will give you just one little example from my practice.

We represent some automotive companies who have spare parts which are imported and which happen to be tapered roller bearings. There was a dumping finding years ago on tapered roller bearings. And the paper piles up and piles up and piles up on a few thousand dollars worth of spare parts, causes requests to be made to submit more adequate nonconfidential summaries, and so on, when it really isn't of the slightest interest to the complainants.

Five and six refer to old points which have to be constantly reviewed. There is built in unfairness in the antidumping regulations, in the process of averaging in the home market and comparing each export sale with that average.

In a model situation, half the exports are bound to be below fair value. It is ridiculous and should not be allowed to continue.

The rules on circumstances of sale have been under reconsideration for 8 years. It is high time they saw the light of day.

And with great respect, Mr. Chairman, to worthy Government servants, I think it is purely fear of this committee and the committee on the other side of the Congress that has prevented our public servants for 8 years from doing what they privately said was correct.

I come to a more important and new point, because it's only recently become apparent that it is a serious problem. The process of review of countervailing duty cases under section 751 means that in the interest of accuracy, you never determine the duties until a year and often 2 years after the entries.

This is a burden on commerce which is absolutely intolerable to the people in the trade, not to know what the rate of duty will be.

Commerce should return to the pre-1980 practice of fixing final duties based on historical experience which are promptly liquidated. The reviews should normally be prospective. I say normally because I can conceive of exceptional cases. But that should be the normal practice.

Eight, I think the settlement procedures under 704 and 734 should be very much simplified. The law was overwritten. I have no doubt that anybody who participated in that enterprise would have liked to have taken a couple of more weeks in private to look over the product and simplify it.

It needs doing very badly. It introduces complexities which are not called for. I have tried as a lawyer repeatedly over 15 years to settle dumping cases, in particular when the dumpers, the minute the dumper was charged, he said, "I will withdraw from the market," or "I will raise my prices to whatever level is appropriate." But antitrust considerations prevented doing what made an awful lot of sense. I think that can be dealt with.

Now, do I have a few more minutes, Mr. Chairman, or am I running over?

Chairman GIBBONS. Go ahead.

Mr. HEMMENDINGER. Thank you.

I have a second set of recommendations that follow from the inadequacy of the premise that all trade can be determined to be fair or unfair and dealt with under such rules of law.

Despite many shortcomings, the GATT and the various arrangements under it have proved very useful between the countries who share a common philosophy and legal tradition.

But they don't work for the nonmarket-economy countries, and they don't work for the developing countries. I won't add to what has been said about the ridiculousness of trying to apply the dumping and countervail to nonmarket countries, because there seems to be a widespread agreement.

Personally, my choice would be to use section 406. I know there are complaints against it, but I think that examination would reveal that they are not the most serious complaints, and that it is better than the Heinz bill.

The developing countries is another story. I was very interested to hear some of the previous testimony from Mr. Carlisle on that point. And I know this committee and the committee on the other side of the Hill was very much devoted to the notion of using the granting of the injury test as an instrument to compel the developing countries to line up and observe discipline, as it is sometimes put.

I think there is a profound philosphical gap here because there is a whole school of development economics which is followed mostly by Latin American countries. You know, the far eastern countries have, by and large, not got into this problem. Taiwan, Korea, Singapore, Japan. Their development has all been export-led with currencies which were, if anything, undervalued.

Continental economies have tended to get into a different problem, because their development has been internal, has led to inflation, has led to the necessity to compensate by export subsidies.

The subsidies code recognizes the propriety of export subsidies for developing countries. I think that it was a mistake to hold out the injury test as a weapon. It is ridiculous for the United States to impose duties on cheaper products unless there is a U.S. domestic interest adversely affected.

We should long ago have conformed the law to the dumping law in that respect. I understand it almost happened in 1974. It is too bad it didn't.

Now the complaints against what is happening with Pakistan, with India, et cetera, reflect a deep problem. They reflect the inadequacy of the technique that was adopted. And rather than keep clubbing countries with which we have very important relationships, and continue with this technique, I think we have to go about it differently.

We have to respect their right to make their own decisions. Their economists may not be brilliant, but their record is probably as good as ours. They have a different idea about what is called for for their own development.

We can always resort to the countervailing duty law and to title II of the Subsidies Code if we have complaints of prejudice or injury.

So I think that that whole enterprise which was entered into so seriously and with such good intentions should be reconsidered.

Thank you, Mr. Chairman.

[The prepared statement follows:]

STATEMENT OF NOEL HEMMENDINGER

SUMMARY

1. Interlocutory appeals in dumping and countervailing duty cases to the Court of International Trade should be eliminated.
2. The Court should exercise restraint in reviewing the exercise of discretion by the ITI and the ITC.
3. Disclosure of confidential information under protective orders should be limited to a positive showing of need in order to clarify an important issue.
4. The administering authority should be encouraged to take short cuts when the costs are otherwise excessive.
5. In the determination of fair value under the Antidumping Act, where sales are at varying prices in both markets, the patterns of sales or the averages should be compared, not each export sale with the homemarket average.
6. In the determination of fair value under the Antidumping Act adjustments for differences and circumstances of sale should not be arbitrarily limited.
7. In countervailing duty cases the practice under Section 751 of the Act should be changed to permit final liquidation of entries without waiting for years for liquidation after review.
8. Settlement procedures under both acts should be simplified.
9. Attempts to apply the Antidumping Act or the Countervailing Duty Law to non-market economy countries should be abandoned and reliance should be placed on Sections 201 and 406 of the Trade Act of 1974.
10. The United States should genuinely accept the provision of the Subsidies Code recognizing the right of developing countries to use export subsidies, and should grant the injury test without using it as a bargaining weapon to seek abandonment or reduction of export subsidies by such countries.

STATEMENT

My name is Noel Hemmendinger. I am senior partner in the Washington law firm of Arter Hadden & Hemmendinger with offices at 1919 Pennsylvania Avenue, N.W. This testimony is given on my own behalf and does not reflect the views of my partners or my clients. I come before you to offer my personal views based on 25 years in the practice of trade law in Washington, in which I have been entirely on the import side.[1] I cannot say that my opinions are unbiased; I can say that they are based upon considerable reflection and are offered in a disinterested spirit.

The International Subsidies Code, the International Antidumping Code, and related provisions of the Trade Agreements Act of 1979, represent the culmination of many years of effort to establish and administer internationally accepted rules for fair trade, and to do so through public procedures in which the interests of parties have full opportunity to be heard. They are the product of hard and conscientious effort by many people. It may appear ungracious to point out that these achievements have brought new problems and have left many problems unsolved. I think it is necessary to do so.

I submit, first, that Title I of the 1979 Act goes much too far in introducing into the administration of the antidumping and countervailing duty laws the paraphernalia of litigation; and second, that the laws against so-called unfair trade are inappropriate means to deal with problems of trade with both the developing nations and the non-market economies.

The extremes of the 1979 Act are found in the overly complex procedures, the excessible insistence upon a public record available to all parties in interest, and excessive appeals to the courts. The administration of these laws has turned into a type of litigation with all the problems familiar in the litigation of other questions involving public regulation of business.

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[1] The law firm is registered under the Foreign Agents Registration Act on behalf of Japanese steel and Brazilian interests.

It is always difficult to turn back the clock, but I do suggest that this Subcommittee should examine in detail, at the earliest opportunity, the simplification of the 1979 Act. The fact that since January 1, 1980 few petitions have been brought under the dumping and countervailing provisions may suggest that this recommendation does not carry a pro-import bias.

The answer does not lie in adding ever more personnel to the International Trade Administration of the Commerce Department. It is already excessively bureaucratic. Throwing people at problems is a variant of throwing money at problems. The answer has to lie in relaxation of the over stringent procedures of the 1979 Act and letting in a little common sense based upon cost effectiveness. I know that the 1979 Act results from displeasure with the previous administration of the laws, but legislation is one thing, administration another. Administration can sometimes remedy bad legislation, but legislation can never remedy bad administration. The pendulum has swung much too far and must swing back.

Specifically, I propose as a first set of recommendations that:

1. Interlocutory appeals to the Court of International Trade be abolished. As Gary Horlick, the Deputy Assistant Secretary for Import Administration, said to you on November 12, lawyers perceive it to be their duty to pursue all possible legal avenues in support of their client's interests. The cost is highly excessive for any incremental justice achieved.

2. The Courts exercise restraint in reviewing the exercise of discretion by the ITA and the ITC.

3. Disclosure of confidential information under protective orders be limited to a positive showing of need in order to clarify an important issue. The idea that the government servants can not be trusted unless someone is constantly looking over their shoulders may have some basis in experience, but the price in delays and excessive costs is much too great. Mr. Horlick's remark about lawyers is equally applicable to discovery, and the well-known abuses of discovery in civil litigation are now unleashed under Title I of the 1979 Act.

4. The administering authority be encouraged to take short-cuts when the costs are clearly excessive. For instance, the dumping finding with respect to tapered roller bearings has been applied to spare parts for imported automobiles, with no possible benefit to the petitioners, but considerable expense to the trade and the government.

5. In the determination of fair value under the Antidumping Act where sales are at varying prices in both markets, the patterns or averages be compared. The present practice compares each U.S. sale with the home market average, so that if the sales in each market were identical, half would be found to be below fair value. This is remediable by regulation.

6. In the determination of fair value under the Antidumping Act, adjustments for differences in circumstances of sale not be arbitrarily limited to those having a "direct relationship" to the sales under consideration. This plausible formulation is an abuse introduced by regulation and remediable by regulation—in fact, a revised regulation has been under consideration for about eight years! It is high time it saw the light of day.

7. In countervailing duty cases, Commerce return to the pre-1980 practice of normally fixing duties based on historical experience that are promptly liquidated. The practice under Section 751 of the Act (which I think is not required by the statute) keeps the amount of duty uncertain for one to two years after entry, and is an unreasonable burden on commerce.

8. Simplify the settlement procedures under both dumping and countervail to give relief to the complainants and spare all concerned the vexations of litigation.

A second set of recommendations follows from the inadequacy of the premise that all trade can be determined to be fair or unfair, and dealt with accordingly under law. I do not challenge the validity and usefulness of the General Agreement on Tariffs and Trade and the various arrangements which are based upon its principles. Despite many shortcomings these arrangements have proved to be useful among the developed nations who conceived them, who find they have a reasonable relationship to their economies, and who share consensus on the principles involved. It is interesting, nevertheless, that even among these countries, the laws against unfair trade together with the laws governing fair trade, have proved inadequate in practice to deal with the big cases, e.g. steel, automobiles, textiles.

As for the non-market economy countries, it is obvious that the principles of the antidumping and countervailing duty laws cannot be applied without incredible intellectual gymnastics or completely arbitrary assumptions with respect to the bases of comparison. Section 406 of the Trade Act of 1974, in which the test is market disruption, is a much more satisfactory way of dealing with such problems.

The problems of trade with the developing countries call for much more attention than they have been receiving. In the MTN an effort was made to compel the developing countries to subscribe to the laws of the developed countries and to sign the Subsidies Code, the "club" being the absence of an injury test if they did not do so. The effort has met with mixed success, to say the least, and is the source of serious friction with countries with which the United States has important relationships.

The basic premise that there is a legitimate distinction between fair and unfair trade becomes highly questionable in dealing with many of the developing countries who use strategies for economic development sanctioned by many economists, but which are not consistent with the principles of the GATT. Trade between most nations has been conditioned by governmental interventions over the years. The existence or non-existence of governmental interventions, or for that matter private interventions that can be called subsidies, is a grossly inadequate test for whether the imports into the United States are or are not in the interest of the United States. It should be enough to consider the vagaries of exchange rates among nations to appreciate the capricious character of the application of both countervailing and antidumping laws. Major export subsidies of developing countries are usually alternative strategies to currency devaluation, and should be examined in that context. If the subsidy merely neutralizes the overvaluation of a currency and does not distort comparative advantage, the subsidy is not really an unfair trade practice.

The primary consideration in the application of any trade restriction should be the consequences of the imports for the United States. Normally, the lower the price of the import, the better for the consumers of the United States. The acid test whether restriction is called for should be the consequences for total interests of the United States, not a dubious legal theory.

Thus, the most rational of the laws that involve import restrictions is Title II of the Trade Act of 1974, the so-called "escape clause," which calls for fact-finding by the International Trade Commission, and determination by the President involving all elements of the national interest.

My second set of recommendations is that:

9. Any attempt to apply the Antidumping Act and the Countervailing Duty Law to non-market economy countries be abandoned, and reliance be placed on Sections 201 and 406 of the Trade Act of 1974.

10. The U.S. genuinely accept the provisions of the Subsidies Code that recognize that export subsidies may be legitimate economic measures on the part of developing countries, and abandon the use of Article 14.5 of the Subsidies Code as a device to compel developing countries to abandon export subsidies as the price for receiving the injury test. The injury test should be made a standard part of the Countervailing Duty Law as it has long been of the Antidumping Act. It makes no sense for the U.S. to restrict imports if they do not cause material injury to a domestic industry. The present practice of bilateral arrangements before countries are accepted as co-signatories of the Subsidies Code is contrary to the long standing U.S. practice of non-discrimination and mischievous in its consequences.

Chairman **GIBBONS**. I thank you, and I thank all of the panel. Unfortunately, we have had a collision of important events here. We are voting on the Social Security Conference report right now. And so the committee is going to have to adjourn. But I want to say this before we do adjourn.

We appreciate your testimony. We need your help and guidance in this particular area. I recognize the talent that I see displayed before me here. We need to give greater consideration to what you have said than we have been able to today.

So at some time in the future, perhaps sometime early next year, we will ask you to come back. At that time, I would also ask the staff if we can't get in some of the people from Commerce and from ITC and sit down and have a roundtable discussion of this, because I think you have made some excellent suggestions as to what we can do.

I realize that the nuts and bolts of making this law operate are what you gentlemen are talking about here today. Unfortunately, time doesn't permit us to go into it in the detail we need to.

So with those closing remarks, I have to adjourn us until 2 o'clock. We will take the next panel then with the understanding we are going to come back to you in great depth.

Thank you so much.

Mr. **Verrill**. Thank you, Mr. Chairman.

Mr. **Cunningham**. Thank you, Mr. Chairman.

Mr. **Hemmendinger**. Thank you, Mr. Chairman.

Chairman **Gibbons**. Thank you.

[Whereupon, at 12:35 p.m., the subcommittee was recessed, to reconvene at 2 p.m., this same day.]

AFTERNOON SESSION

Chairman **Gibbons**. Our next witness is Hon. George C. Wortley, Member of Congress from New York State, who is here to introduce Mr. George Burns, who is the president of the Consumer Products Division of the SCM Corp.

Mr. Wortley, we welcome you to the committee. We know of the fine work that you are doing here, and we appreciate you taking time to come and visit with us and introduce your constituent.

STATEMENT OF HON. GEORGE C. WORTLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. **Wortley**. Thank you, Mr. Chairman. I do appreciate very much the opportunity of coming here today to introduce Mr. George Burns, a friend and former neighbor of mine from Fayetteville, N.Y.

Mr. Burns is president of the Consumer Products Division of SCM Corp. of New York. Mr. Burns will be testifying today about the antidumping laws, and their effect on the Smith-Corona Division of his corporation.

Fair trade is the issue here today. The problems of Smith-Corona are not unique. What is perhaps unique about this company is that it wishes to stay viable in their home market, using American workers in U.S. manufacturing plants.

Vigorous and firm enforcement of our antidumping laws preserves fair trade. This strong language has been used by the U.S. Trade Representative, the Joint Economic Committee of the Congress, and your own committee report that accompanied the Trade Agreements Act of 1979.

About 500 employees have lost their jobs, and temporarily another 2,800 employees have been terminated at the Smith-Corona portable electric typewriter manufacturing plants in Groton and Cortland, N.Y. These are the last manufacturing plants to produce the portable electric typewriter in this country. These employees have lost their job because of the Commerce Department's unwillingness to enforce our antidumping laws as vigorously as they were intended to be enforced.

Smith-Corona is currently involved with the courts in seeking a remedy to the antidumping violations which have affected their industry, in a process with no clear timeframe, but one that certainly can be measured in years. Commerce officials have informed me that they see more and more antidumping cases being resolved in the courts. They have suggested perhaps the remedy is to appoint more judges and hire more judicial staff.

If the current judicial remedy is the trend in antidumping resolutions, then this day may be a historic one, for this could be the last day an American manufacturer shows any grave concern over the antidumping regulations. Corporations will find it more prudent, as some already have, to leave the production of their product to foreign manufacturing plants. What good is a judicial victory if it is announced on the empty, dormant floors of a manufacturing plant?

My concern over this trend is a shared one. Most of my colleagues in the New York delegation have indicated their concern in a joint letter to Secretary of Commerce, Malcolm Baldrige, a copy of which I shall leave with you today. Members of the New York delegation have already learned what can happen when enforcement of fair trade becomes lax. Testimony of the accompanying brief which you are about to hear is a classic case of the inefficiencies of our antidumping laws. I urge your committee to bring about improvements in the regulations which govern our antidumping laws. Fair trade in our marketplace must be preserved.

This holiday season, the unemployed workers of the Smith-Corona plant in my district serve as a strong reminder of what hangs in the balance.

On behalf of the members of the New York delegation and those New Yorkers whose jobs hang in the balance, I ask you to listen. May I present Mr. George Burns?

Chairman GIBBONS. Yes, sir, Mr. Burns, before we listen to you, we will place in the record your letter to Secretary Baldrige.

Without objection, it is so ordered.

[The letter follows:]

Congreſs of the United States
House of Representatives
Washington, D.C. 20515

December 8, 1981

The Honorable Malcolm Baldrige
Secretary of Commerce
Department of Commerce
Fourteenth Street
Washington, D.C. 20230

Dear Mr. Secretary:

We are vitally concerned with the Department of Commerce's ineffective enforcement of its own regulations on foreign product "dumping" on American markets.

From all indications, the Department has completely lost sight of the mandate given it by Congress in the Trade Agreements Act of 1979.

A House Report on the 1979 Act, stated that, "The Committee feels very strongly that both the countervailing and anti-dumping duty laws have been inadequately enforced (by the Commerce Department) in the past... The provisions of this bill are intended to remedy this situation."

In recent years, American product manufacturers have suffered often irreparable damages at the hands of foreign manufacturers. We need not recite the list of American businesses which have folded, nor the jobs lost, because of the combination of unfair market practices and the lack of the enforcement of American foreign trade laws--initially by the Treasury Department and now by the Department of Commerce. The distinctions between "fair trade" and "free trade" have apparently been blurred so completely within the Department that there is no longer any distinction at all. "Enforcement" of our trade laws has, unfortunately, not meant the energetic pursuit of statutory remedies by the Commerce Department but rather the referral to the courts by the affected industries where the cases languish and the relief is delayed for years.

We believe that this condition--one which allows the patient to die while the doctor refuses to administer the cure--has reached intolerable lengths. Today's case-in-point is that of Smith-Corona in Cortland, and Groton, New York. Smith-Corona is today the last American manufacturer of portable electric typewriters, a product Smith-Corona pioneered. In both 1974 and again in 1979, the presence of dumping by Japanese manufacturers was established. Yet, instead of the Department of Commerce instituting actions to stop foreign dumping, the department reduced the dumping margins for foreign makers which enabled the illegal practices to continue.

Clearly, unattended injury leads to death. New York State has been significantly injured because much of the first industrial strength of this nation was located in New York. It is that strength which seems today to be the primary target of cutrate and foreign government-protected competitors. I cite the demise of the domestic television industry once located in many New York communities as an example.

The fact that the Department of Commerce is unwilling to begin remedial treatment of injury even where the injury is fatal is a shameful testament to its neglect of the needs of the American business community and its duty under the dumping law.

We are not asking the Department of Commerce to "protect" American business from free and fair competition. Certainly, if a business cannot compete against its competition in a fair and open world trade atmosphere, the consumer will ultimately determine the lifespan of that business. Similarly, we are not asking that the American justice system be excluded from opportunity to review the enforcement decisions. But we do object strenuously to your department's near-total abandonment of the interests of American business and your policy of forcing neglected victims of dumping to seek near-complete reliance on the courts as enforcer of the Trade Agreements Act of 1979.

Today, delay in the courts--even in cases which are eventually won by American firms--allows time for dumped products to strike the fatal blow to domestic manufacturers. Court victories are indeed hollow if they are announced in empty factories.

We urge that you immediately take steps to assure that domestic manufacturers are shielded from additional injury at the hands of foreign manufacturers when dumping of foreign products is confirmed. All available Department of Commerce trade restrictions on those who practice unfair trade should be strictly enforced during judicial review of such restrictions if any review is forthcoming.

We are asking nothing of our own Department of Commerce which isn't already provided to foreign manufacturers by their own governments. If an error is made in an enforcement decision, let it be in favor of the American manufacturer and those American families which rely upon paychecks today threatened by unfair overseas marketers.

In the interest of American business and manufacturing community and in the interest of our own New York industrial community, we implore you to return the Department of Commerce to its rightful status as promoter of free and fair trade where America will thrive.

Sincerely,

Geo. C. Wortley

George C. Wortley
Member of Congress

Samuel S. Stratton
Member of Congress

Raymond J. McGrath

Raymond J. McGrath
Member of Congress

Charles E. Schumer

Charles E. Schumer
Member of Congress

Henry J. Nowak

Henry J. Nowak
Member of Congress

Gregory W. Carman

Gregory W. Carman
Member of Congress

Norman F. Lent

Norman F. Lent
Member of Congress

ADDABBO

Joseph P. Addabbo
Member of Congress

John J. LaFalce

John J. LaFalce
Member of Congress

Gary A. Lee

Gary A. Lee
Member of Congress

Gerald B. Solomon
Member of Congress

Robt Garcia

Robert Garcia
Member of Congress

Donald J. Mitchell

Donald J. Mitchell
Member of Congress.

Mario Biaggi

Mario Biaggi
Member of Congress

Hamilton Fish

Hamilton Fish, Jr.
Member of Congress

Richard Ottinger

Richard L. Ottinger
Member of Congress

Jonathan B. Bingham

Jonathan B. Bingham
Member of Congress

Leo C. Zeferetti

Leo C. Zeferetti
Member of Congress

The Honorable Malcolm Baldrige
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John LeBoutillier
Member of Congress

Bill Carney
Member of Congress

Benjamin A. Gilman
Member of Congress

Geraldine A. Ferraro
Member of Congress

David O'B Martin

David O'B. Martin
Member of Congress

Stan Lundine
Member of Congress

Frank Horton

Frank Horton
Member of Congress

Thomas J. Downey
Member of Congress

Peter A. Peyser
Member of Congress

Benjamin S. Rosenthal
Member of Congress

James Scheuer
Member of Congress

Matthew F. McHugh

Matthew F. McHugh
Member of Congress

STATEMENT OF GEORGE F. BURNS, PRESIDENT, CONSUMER PRODUCTS DIVISION, SCM CORP., ACCOMPANIED BY EUGENE STEWART, COUNSEL

Mr. BURNS. Thank you, Mr. Chairman, Congressman Wortley, members of the committee. I have a full statement but I would prefer to summarize it if I may.

Chairman GIBBONS. We will put the entire statement in the record immediately following your remarks.

Mr. BURNS. Thank you very much sir. I began my career in 1939, selling portable typewriters. Except for the war years, I have been with our company and with our industry ever since. I am a year away from retirement.

I began to wonder whether there will even be a portable typewriter industry when I go. That is one of the reasons why I wanted to come down and I thank this committee for this opportunity to come before you.

I want to tell you specifically about dumping. I want to tell you about a severe hardship inflicted on our company as a result of persistent dumping of Japanese imports.

But even more important to this committee, I want to alert you to the indifference, if not outright hostility, shown by Federal Government employees charged with enforcing the dumping law.

Both the administration and the Congress have repeatedly stressed the urgency of providing vigorous enforcement of the antidumping law. But at Smith-Corona, we are still waiting for that policy to be carried out. We ask for your help in getting the people charged with implementing this trade policy to do so.

For eight frustrating years, we have been trying to restore fair competition to the portable electric typewriter industry.

That industry today stands virtually destroyed—only Smith-Corona survives—and Smith-Corona is suffering heavy losses.

At one time, Smith-Corona area employment was over 5,000. The beginning of this year, it was 4,000. On December 1, it dropped to 3,500.

By contrast, the Japanese portable electric typewriter industry is now up to five manufacturers. It stands on the threshold of achieving the elimination of its final American competitor.

Did it get there as a result of "free trade"? No way. It is there because of conduct long ago found to be in violation of American law. The Japanese industry got there by dumping.

I am sure you all remember four big names in the domestic portable typewriter industry—Royal, Remington, Underwood, and Smith-Corona.

Ever wonder what happened to them? During the 1960's and early 1970's, the first three, which had employed 15,000 people, each closed large manufacturing facilities in New York and Connecticut and began putting their names on portables they bought from Japanese manufacturers.

But Smith-Corona survived. We survived because we invented the portable electric typewriter in the late 1950's and because we invented the cartridge ribbon portable typewriter in the early 1970's. And we chose to stay in the United States because we were the leader in portable typewriter technology and because we had some 5,000 skilled and dedicated employees that gave us manufacturing costs that even the lower-paid Japanese workers couldn't match.

In short, we thought we could compete effectively. And we still think so, but not with the deck stacked against us.

But fair competition on the merits isn't the way the game has been played.

Mr. Chairman and members of the committee, let me emphasize this was not and is not a case of superior Japanese or foreign technology triumphing over a backward American company.

Smith-Corona is the technological leader in the manufacture of portable electric typewriters and an example of the best American industry can offer. If our industry does not survive, it will be as a direct result of proven violations of U.S. law and the failure of Federal agencies to enforce the remedies mandated by Congress.

When we first saw Japanese portables being dumped in this country in violation of U.S. law in the early 1970's, we didn't close our plants. We didn't ask for protectionist measures.

There are no tariff duties on imported portable typewriters, and we asked for none. Nor did we ask for import quotas. Instead, we took them on head-to-head in the market. And we began gathering data.

In 1973, we asked the Treasury Department to investigate. Treasury found that Japanese portables were, in fact, being dumped—sold at less than fair value.

In 1975, the International Trade Commission (ITC) held a hearing. I think the first time I really began to understand the kind of problem we had was when the Justice Department came to the hearing and argued on behalf of the Japanese. Then the ITC ruled, 3 to 2, that even though Japanese suppliers had substantially penetrated the U.S. market through dumping, there was no injury because Smith-Corona was still profitable.

Maybe you have just got to go out of business before anybody pays any attention to what you are saying. The law calls for the imposition of dumping duties to correct distortion in the marketplace caused by this type of unfair competition.

But because the ITC found "no injury," no dumping duties were assessed. Smith-Corona appealed the "no injury" finding, and we asked that our appeal be expedited.

Five years later, in March 1980, the U.S. court of International Trade decided that, yes, some things about the ITC "no injury" ruling didn't make sense.

Yet, twice since then, the Department of Justice has asked the court to dismiss Smith-Corona's case, and rule in favor of the Japanese importers. The court refused to do that and the appeal of the 1975 case is still pending.

Mr. Chairman, we are not here to ask that anything before the courts now be commented upon. That is not why we are here. But this is an extremely bad situation.

Congress clearly intended to provide prompt relief for domestic industries injured by dumping. When you have to wait 5 or 10 years for the courts to make final decisions, then any decision, as in our case, makes little sense.

During the 5 years after the first finding of dumping, what was happening in the marketplace? During the proceedings, imports of portables dropped off somewhat. But after the ITC's "dumping-but-no-injury" ruling, imports showed an immediate and dramatic increase.

Between 1976 and 1978, annual imports of Japanese-made portables more than doubled to over 500,000 units. And the dumping continued.

So, in 1979, Smith-Corona again asked Treasury to investigate. And again, Treasury determined that Japanese-made portables were being sold here at less than fair value.

This time, the margins of dumping were enormous: 48 percent on average for the largest Japanese supplier, 37 percent on average for all Japanese suppliers.

At last, in April 1980, the ITC ruled unanimously that the U.S. industry, consisting solely of Smith-Corona's New York State facilities, had suffered injury as a result of the dumping. They could hardly have ruled otherwise in the face of reduced employment, lower production, lower sales and substantially lower profits. In May 1980, the Government issued an antidumping duty order.

We thought we could finally see an end to the dumping and the prospect of fair competition.

But the Japanese importers have avoided that prospect. In May 1980, the two largest Japanese suppliers of portables asked for and got, from the International Trade Administration, an Agency of the Department of Commerce, a "quick" reinvestigation of dumping margins.

They were able to do this under a new provision added to the Trade Agreements Act at the recommendation of the Treasury Department.

This is a statute added to speed up the process, not to add another hurdle.

During this reinvestigation by Commerce, the Japanese companies claimed that dumping had suddenly been completely eliminated because they had lowered prices in Japan and raised them in the United States. The Commerce representatives paid a visit to the home offices of the Japanese manufacturers. There, with a representative of the Japanese Ministry of International Trade and Industry looking on, they were furnished with new documentation.

Smith-Corona was not permitted to attend these sessions. Our own evidence, including U.S. pricing data obtained by Smith-Corona's field sales force, was rejected by Commerce.

In August 1980, Commerce made the astounding finding that during the period covered by the reinvestigation [January–April 1980], the average dumping margins on the largest Japanese supplier's portables had been virtually eliminated—had gone from 48 percent to 4 percent. For the second-largest supplier, the average dumping margins were said to have dropped from 36 percent to 7 percent.

We thought, and we think, that this was absolutely outrageous. As this chart shows, prices of the Japanese models had either not changed at all or had increased at far less than the rate of inflation. We had thought the reinvestigation would show the dumping margins had increased. We were naive.

We have prepared a detailed analysis of this incredible scenario which we would ask the committee to include in the record of this hearing. Somehow, under the administration of the Commerce Department, enormous dumping margins managed to vanish within a few months with no noticeable change in the U.S. prices of Japanese-made portable typewriters.

How did the Japanese react to the virtual elimination of the dumping margins? They responded by writing to Commerce and demanding further reductions.

At the same time, they have proceeded on other fronts. Since the issuance of the antidumping duty order, Smith-Corona has been forced to defend a half dozen legal and administrative proceedings by Japanese importers either challenging aspects of the dumping rulings or attempting to have various typewriter models excluded from the antidumping duties.

And, of course, their imports have increased—and our ability to compete deteriorates as these dumped imports pour in. We have pointed out that imports of Japanese portables during the first half of calendar 1980 had increased 45 percent from the 1979 level.

During the same period, the average unit value of Japanese portables had decreased. In July 1980, Smith-Corona was forced to shut down a production line of 165 employees. We said at that time that the sharp reductions in dumping margins made by the Commerce Department had opened the door for the Japanese manufacturers to flood the U.S. market and further injure Smith-Corona. Unfortunately, these words were prophetic.

This chart shows that during the first 9 months of calendar 1981, imports of Japanese portables were 468,000, up 13.4 percent from 412,000 during the same period of 1980.

During the first 9 months of 1981, Smith-Corona shipments were down a further 22 percent from the already depressed 1980 level. And we are sustaining large losses.

We announced a layoff of 60 additional people in the first week of November and, on November 30, an additional 500 Smith-Corona people lost their jobs, in large part because of dumping; 3,300 more will be idle an additional 3 weeks past Christmas laydown.

Mr. Chairman, it is now 8 years since Smith-Corona's first antidumping proceeding. Nearly 3 years have passed since the filing of our second antidumping petition.

The Japanese suppliers have repeatedly been found to be selling at less than fair value—an unfair marketing practice that extended throughout the 1970's.

Despite these findings, no relief has been obtained in the marketplace; nor is there likely to be relief in the near future. Far from it.

My lawyers have told me that the Commerce Department has proposed new antidumping regulations recommended by Japanese and other importers. These are the proposed remedies that Deputy Assistant Secretary Horlick referred to when he testified to this committee last month.

As we explain in the technical statement we have submitted to the committee, not only do these new regulations not restore equilibrium to antidumping enforcement, they would leave American industry utterly defenseless against unlawful dumping.

If and when Smith-Corona goes under, it would be a terrible blow to the public interest, as well as to the thousands of Americans whose livelihoods depend upon the survival of this industry.

But more important than that, it will be a clear signal to other companies, here and abroad, that the United States doesn't care if its trade laws are enforced or not.

The vitality of the portable typewriter industry has been sapped by a decade of dumping without effective Government intervention. When this domestic industry goes, others are sure to follow.

May I please sum up for you, sir? First, Smith-Corona is a company that chose not to run or ask for protection, but instead to rely on the antidumping law that Congress had passed.

And what are the results of Smith-Corona's 8-year struggle? Massive, burdensome, and very costly legal proceedings with no end in sight; success in establishing violations but failure in obtaining relief; and continuous ruinous dumping which now threatens our very existence.

Second, this is an industry where the Japanese have had no edge in technology, quality, or efficiency. In those circumstances, the Japanese suppliers have shown they are willing to break our laws to serve their economic interests.

This is not just rhetoric. I am referring to rulings by the Treasury Department, the Commerce Department, and the International Trade Commission.

Third, the bureaucracy in the Commerce and the Justice Departments show no interest in the preservation and growth of American industry and American jobs under siege by illegal foreign competition.

The bureaucracy has, as a matter of policy, tilted enforcement of the antidumping remedies in favor of the convicted violators of the law, and against the victim of the violations.

Instead of using the law to defend American industry, as Congress intended, the Commerce Department and the Justice Department are acting as the protector of the foreign industry against dumping duties. And they are doing so even where that means the destruction of American industry and the loss of American jobs.

Fourth, Mr. Chairman, we believe the Congress has the power to move with the speed required to save our industry. In our supplementary statement submitted to this committee, we outline specific steps, page 35, which we urge the Congress to take.

I would add one final note: All of what we have said assumes that the laws which are on the books should be enforced. If the State, Commerce, or Defense Departments have some valid reason why, as a matter of national policy, the laws should not be enforced against the Japanese, they should say so directly.

But the permanent bureaucrats should not be allowed to amend the law indirectly by not enforcing it.

Mr. Chairman, members of the committee, thank you very much for permitting us to come here.

[The prepared statement and additional material follow:]

STATEMENT OF GEORGE F. BURNS, PRESIDENT, CONSUMER PRODUCTS DIVISION, ISCM CORP.

Good morning. My name is George Burns. I am the President of the Consumer Products Division of SCM Corporation. Smith-Corona typewriters is the largest part of my division. I began my career as a typewriter salesman in 1939. Except for the war years, I've been in the typewriter industry ever since. Whether there will even be a U.S. portable typewriter industry when I retire is very much on my mind. That's why I wanted to come here and I thank the Committee for your invitation.

I want to tell you about the severe hardship inflicted upon my company as a result of persistent, proven dumping of Japanese imports. Even more important to this Committee, I want to alert you to the indifference, if not outright hostility, shown by Federal Government employees charged with enforcing the dumping law.

Both the Administration and the Congress have repeatedly stressed the urgency of providing vigorous enforcement of the antidumping law. But at Smith-Corona we're still waiting for that policy to be carried out. We ask for your help in getting the people charged with implementing this trade policy to do so.

For eight frustrating years we have been trying to restore fair competition to the portable electric typewriter industry.

That industry today stands virtually destroyed—only Smith-Corona survives—and Smith-Corona is suffering heavy losses. At one time, Smith-Corona area employment was over 5,000. The beginning of this year it was 4,000. On December 1, it dropped to 3,500. By contrast, the Japanese portable electric typewriter industry is now up to five manufacturers. It stands on the threshhold of achieving the elimination of its final American competitor. Did it get there as a result of "free trade"? No way. It is there because of conduct long ago found to be in violation of American law. The Japanese industry got there by dumping.

I'm sure you all remember four big names in the domestic portable typewriter industry—Royal, Remington, Underwood, and Smith-Corona. Ever wonder what happened to them? During the 1960's and early 1970's the first three, which had employed 15,000 people each closed large manufacturing facilities in New York and Connecticut and began putting their names on portables they bought from Japanese manufacturers.

We survived because we invented the portable electric typewriter in the late 1950's and because we invented the cartridge ribbon portable typewriter in the early 1970's. And we chose to stay in the U.S. because we had modern, efficient manufacturing facilities, because we were the leader in portable typewriter technology, and because we had some 5,000 skilled and dedicated employees that gave us manufacturing costs that even the lower paid Japanese workers couldn't match.

In short, we thought we could compete effectively. And we still think so, if only the deck isn't stacked against us. But fair competition on the merits isn't the way the game has been played.

Mr. Chairman and members of the Committee, let me emphasize this was not and is not a case of superior Japanese or foreign technology triumphing over a backward U.S. technology.

Smith-Corona is the technological leader in the manufacture of portable electric typewriters and an example of the best American industry can offer. If our industry does not survive, it will be as a direct result of proven violations of U.S. law and the failure of federal agencies to enforce the remedies mandated by Congress.

When we first saw Japanese portables being dumped in this country in violation of U.S. law in the early 1970's, we didn't close our plants. We didn't ask for protectionist measures. There are no tariff duties on imported portable typewriters, and we asked for none. Nor did we ask for import quotas. Instead, we took them on head-to-head in the market. And we began gathering data. In 1973, we asked the Treasury Department to investigate. Treasury found that Japanese portables were in fact being dumped—sold at less than fair value.

In 1975, the International Trade Commission (ITC) held a hearing. I think the first time I really began to understand the kind of problem we had was when the Justice Department came to the hearing and argued on behalf of the Japanese. Then the ITC ruled 3 to 2 that even though Japanese suppliers had substantially penetrated the U.S. market through dumping, there was no injury because Smith-Corona was still profitable.

It seems you have to go out of business before you get anyone's attention.

The law calls for the imposition of dumping duties to correct distortion in the marketplace caused by this type of unfair competition. But because the ITC found "no-injury", no dumping duties were assessed. Smith-Corona appealed the "no-injury finding", and we asked that our appeal be expedited.

Five years later * * * in March, 1980 * * * the U.S. Court of International Trade decided that, yes, some things about the ITC "no-injury" ruling didn't make sense. Yet, twice since then the Department of Justice has asked the Court to dismiss Smith-Corona's case, and rule in favor of the Japanese importers. The Court refused to do that and the appeal of the 1975 case is still pending.

Mr. Chairman and Members of the Committee, please understand I am not asking for your comments on matters now in the courts. But this is a bad situation. Congress clearly intended to provide prompt relief for domestic industries injured by dumping. When you have to wait five or ten years for the courts to make final decisions, then as our case shows, any relief comes too late.

During the five years after the first finding of dumping, what was happending in the marketplace? During the proceedings, imports of portables dropped off somewhat. But after the ITC's "dumping-but-no-injury" ruling, imports showed an immediate and dramatic increase. Between 1976 and 1978, annual imports of Japanese-made portables more than doubled to over 500,000 units. And the dumping continued.

So in 1979, Smith-Corona again asked Treasury to investigate. And again, Treasury determined that Japanese-made portables were being sold here at less than fair value. This time the margins of dumping were enormous: 48 percent on average for the largest Japanese supplier, 37 percent on average for all Japanese suppliers.

At last, in April, 1980, the ITC ruled unanimously that the U.S. industry, consisting solely of Smith-Corona's New York State facilities, had suffered injury as a result of the dumping. They could hardly have ruled otherwise in the face of reduced employment, lower production, lower sales and substantially lower profits. In May, of 1980 the government issued an Antidumping Duty Order.

We thought we could finally see an end to the dumping and the prospect of fair competition.

But the Japanese importers have avoided that prospect. In May, 1980, the two largest Japanese suppliers of portables asked for and got, from the International Trade Administration, an agency of the Department of Commerce, a "quick" reinvestigation of dumping margins. They were able to do this under a new provision added to the Trade Agreements Act at the recommendation of the Treasury Department. This is a statute Congress added to speed up the process, not to add another hurdle.

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We thought that was outrageous. As this chart shows, prices of the Japanese models had either not changed at all or had increased at far less than the rate of inflation. We had thought the reinvestigation would show the dumping margins had increased. We were naive.

We have prepared a detailed analysis of this incredible scenario which we would ask the Committee to include in the record of this hearing. Somehow, under the administration of the Commerce Department, enormous dumping margins managed to vanish within a few months with no noticeable change in the U.S. prices of Japanese portables.

How did the Japanese react to the virtual elimination of the dumping margins? They responded by writing to Commerce and demanding further reductions. At the same time, they have proceeded on other fronts. Since the issuance of the Antidumping Duty Order, Smith-Corona has been forced to defend a half dozen legal and administrative proceedings by Japanese importers either challenging aspects of the dumping rulings or attempting to have various typewriter models excluded from the antidumping duties.

And, of course, their imports have increased—and our ability to compete deteriorates as these dumped imports pour in. We've pointed out that imports of Japanese portables during the first half of calendar 1980 had increased 45 percent from the 1979 level. During the same period the average unit value of Japanese portables had decreased by 0.5 percent and in July, 1980, Smith-Corona was forced to shut down a production line and lay off 165 employees. We said at the time that the sharp reductions in dumping margins made by the Commerce Department had opened the door for the Japanese manufacturers to flood the U.S. market and further injure Smith-Corona. Unfortunately, these words were prophetic.

This chart shows that during the first nine months of calendar 1981, imports of Japanese portables were 468,000, up 13.4 percent from 412,000 during the same period of 1980. During the first nine months of 1981, Smith-Corona shipments were down a further 22 percent from the already depressed 1980 level. And we are sustaining large losses.

We announced a lay off of 60 additional people in the first week of November and, on November 30, an additional 500 Smith-Corona people lost their jobs, in large part because of dumping. 3,300 more will be idle an additional three weeks.

Mr. Chairman it is now eight years since Smith-Corona's first anti-dumping proceeding. Nearly three years have passed since the filing of our second antidumping petition. The Japanese suppliers have repeatedly been found to be selling at less than fair value—an unfair marketing practice that extended throughout the 1970's. Despite these findings, no relief has been obtained in the marketplace; nor is there likely to be relief in the near future. Far from it. My lawyers have told me that the Commerce Department has proposed new antidumping regulations recommended by Japanese and other importers. These are the proposed remedies that Deputy Assistant Secretary Horlick referred to when he testified to this Committee last month. As we explain in the technical statement we have submitted to the Committee, not only do these new regulations not restore equilibrium to antidumping enforcement, they would have American industry utterly defenseless against unlawful dumping.

If and when Smith-Corona goes under, it would be a terrible blow to the public interest, as well as to the thousands of Americans whose livelihoods depend upon the survival of this industry. And it would be a clear signal to other companies, here and abroad, that the United States doesn't care if its trade laws are enforced or not. The vitality of the portable typewriter industry has been sapped by a decade of dumping without effective government intervention. If this domestic industry is allowed to go, others will surely follow.

Let me sum up the key points I want to leave with you.

First, Smith-Corona is a company that chose not to run or ask for protection, but instead to rely on the antidumping law, that Congress had passed. And what are the results of Smith-Corona's eight year struggle? Massive, burdensome, and very costly legal proceedings with no end in sight; success in establishing violations but failure in obtaining relief; and continuing ruinous dumping which now threatens our very existence.

Second, this is an industry where the Japanese have had no edge in technology, quality or efficiency. In those circumstances, the Japanese suppliers have shown they are willing to break our laws to serve their economic interests. This is not just rhetoric. I'm referring to rulings by the Treasury Department, the Commerce Department and the International Trade Commission.

Third, the bureaucracy in the Commerce and the Justice Departments shows no interest in the preservation and growth of American industry and American jobs under siege by illegal foreign competition. The bureaucracy has, as a matter of policy, tilted enforcement of the antidumping remedies in favor of the convicted violators of the law and against the victim of the violations. Instead of using the law to defend American industry, as Congress intended, the Commerce Department and the Justice Department are acting as the protector of the foreign industry against dumping duties. And they are doing so even where that means the destruction of American industry and jobs.

Fourth, Mr. Chairman, we believe the Congress has the power to move with the speed required to save our industry. In our supplementary statement submitted to this Committee we outline specific steps (p. 35) which we urge the Congress to take.

I would add one final note: All of what we have said assumes that the laws which are on the books should be enforced. If the State, Commerce, or, Defense departments have some valid reason why, as a matter of national policy, the laws should not be enforced against the Japanese, they should say so directly. But the permanent bureaucrats should not be allowed to amend the law indirectly by not enforcing it.

Statement in Support of
the Testimony of George F. Burns
President, Consumer Products Division, SCM Corporation

1. Introduction and history of proceedings.

Summary. This statement describes the history of the portable electric typewriter antidumping proceedings (pages 1 - 14); reviews the legislative history of the Trade Agreements Act of 1979 and the clearly expressed Congressional intent for vigorous and improved antidumping enforcement (pages 15 - 23); discusses the specific actions of the International Trade Administration of the Department of Commerce which were contrary to the intent of Congress, and which resulted in a massive reduction in the dumping margins (and the amount of antidumping duties to be collected on the Japanese machines) in the portable electric typewriter case (pages 23 - 35); and discusses the Commerce Department's intent to further weaken enforcement of the antidumping law by its newly proposed amendments to the antidumping duty regulations (pages 36 - 40).

Mr. Burns' testimony is based on the experience of the Smith-Corona Group of SCM Corporation. In two antidumping proceedings extending over a period of eight years, SCM has sought unsuccessfully to secure the proper assessment of antidumping duties to unfairly traded portable electric typewriters (PET's) from Japan. Despite final determinations of dumping, and the ascertainment of quite substantial margins of dumping by the administering agencies in each case, SCM has yet to receive the correction of dumping-based unfair pricing which the Congress intended in its various enactments and amendments of the Antidumping law.

a. The first antidumping proceeding. The first case was filed on February 14, 1974, and resulted in an affirmative determination by the Treasury Department that PET's from Japan were being sold in the United States at less than fair value. Federal Register, Vol. 40, No. 55, March 20, 1975, pp. 12685-6. The Treasury Department did not announce the margins of dumping in its published determination, but in their report, Commissioners Moore and Ablondi of the International Trade Commission stated that 97% of the portable electric typewriters from Japan were sold in the United States at margins of dumping, and that "In some cases, substantial percentages (even as high as 100 percent) of the amount of the price differential between the comparable domestic product and the imported item were accounted for by the margin of LTFV sales". USITC Publication 732, June 1975, p. 8. However, three other Commissioners voted negatively, and no relief was forthcoming.

SCM pioneered in the then uncharted course of seeking judicial review of that 3-2 negative decision by the ITC. Congress had not provided explicit jurisdiction for such cases to be heard by the Customs Court by way of an American Manufacturer's Protest, so SCM went to the U. S. District Court under 28 U.S.C. 1340, which at the time gave district courts jurisdiction of all cases involving revenue from imports except matters within the jurisdiction of the Customs Court. The District Court disavowed jurisdiction. SCM Corp. v. U. S. International Trade Commission, 404 F. Supp. 124 (D.C., D.C. 1975). SCM believed that the law intended that it have judicial review in some court, so it took an appeal to the U. S. Court of Appeals for the District of Columbia Circuit. It held that we were entitled to judicial review either by the U.S. District Court or the U. S. Customs Court. The Court of Appeals directed us to go first to the Customs Court, and if it would not accept jurisdiction, then to come back to the U.S. District Court. SCM Corporation v. U. S. International Trade Commission, 549 F.2d 812 (D.C. Cir., 1977). The Customs Court did accept jurisdiction. SCM Corporation v. United States, 450 F. Supp. 1178 (U. S. Customs Court, 1978). Upon consideration of the merits of the case, the Customs Court has twice sent the case back to the I.T.C. for a further report and clarification of its 3-2 negative decision. SCM Corp. v. United States, 487 F. Supp. 96 (U.S. Customs Court, 1980); SCM Corporation v. United States, Slip Op. 81-57 (U. S. Court of International Trade, Court No. 77-4-00553, July 1, 1981). The case is now pending on motions for summary judgment before the Court of International Trade (successor to the Customs Court), following the I.T.C.'s response to the Court on the second remand. Judicial review of the I.T.C.'s 3-2 negative determination in 1975, which the Court has found twice to be sufficiently flawed to require remand and further clarification, has indeed proved to be "justice delayed, justice denied".

Meanwhile, the Japanese continued to invade the American market with impunity, on the basis of continued dumping, during the protracted court proceedings, with the United States Government through the Justice Department fighting SCM every inch of the way. Between 1976 and 1980 imports increased strongly, by 75%, from 504,227 to 881,554 units. Of this increase in 337,327 imported units, the lion's share, 75%, or 252,032 units came from Japan. Moreover, imports increased each year without any downturn. Due to, and during, the antidumping proceeding in 1979, imports from Japan declined relative to 1978, dropping to just below 1977 levels. The International Trade Commission noted this decline in its report in the 2d antidumping investigation, but found that "The absolute decline in imports (from Japan) during 1979 was offset by sales from importers' inventories, which, after tripling in 1978, dropped by 18 percent in 1979 on a quantity basis. Thus, while actual imports as a share of consumption declined in 1979, importers maintained their effective strength in the market by selling stocks on hand". (USITC Publication 1062, May 1980, p. 6.) In 1980 imports from Japan rose, but remained below the 1978 level. Imports from Japan rose again during the first 9 months of 1981 relative to the like period of 1980 (412,676 units in the first 9 months 1980 vs 468,533 in the like period of 1981). For the first 9 months of 1981, imports from Japan are running at an annual rate of 639,199 units, the largest volume of the 1976-81 period. Thus, total imports are increasing; the largest component is imports from Japan; and as of 1981, imports from Japan are virtually certain greatly to exceed all prior years' levels.

b. The second antidumping proceeding. Faced with the steady loss of market position to the Japanese, and with its earnings under heavy pressure from the pricing actions required to counter the Japanese use of dumping margins to undercut its prices in all markets, SCM filed a new antidumping duty petition with the Treasury Department on April 9, 1979. On March 21, 1980, the U. S. Department of Commerce published its final determination that portable electric typewriters from Japan were being sold in the United States at less than fair value within the meaning of the recently revised Antidumping Act, Sec. 731 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (hereafter, "the Act"). The Department found that margins of dumping existed on 93 percent of the sales compared, and that the weighted average margin on the basis of all sales compared is 37.12 percent. The dumping margins were determined for each Japanese manufacturer (in the order of their volume of sales in the U.S. market), as follows: Brother Industries 48.70 percent; Silver Seiko, 36.53 percent; and Nakajima All, 4.36 percent. The I.T.C. investigated and unanimously determined that SCM (the domestic industry producing portable electric typewriters) is being materially injured by the importation of Japanese machines which are being sold at less than fair value. U.S.I.T.C. Publication 1062, May 1980. The International Trade Administration, U.S. Department of Commerce (hereafter, "Commerce Department") published an antidumping duty order on May 9, 1980, in conformance with Sec. 736 of the Act. Federal Register, Vol. 45, pp. 30618-19. As required by the Act, that order directed customs officers to require the deposit of estimated antidumping duties on current and future entries in the amount of the weighted average margins of dumping previously determined by the Department of Commerce, and at such time as the Department made its determination of the amount of dumping duties to be assessed on past entries, to assess antidumping duties in such amounts.

c. The massive reduction in dumping margins under the new "quick" review procedure of Sec. 736(c) of the Act.

So, finally, it seemed that the stage was set for the assessment of antidumping duties in the amount of the margins of dumping which the administering authority had determined were being used in the sale of Japanese portable electric typewriters in the United States, and which the I.T.C. had determined were causing material injury to Smith-Corona. But it was not to be. The affirmative result intended by the Congress, and the Committee on Ways and Means, when it directed that there be "strong, aggressive and persistent enforcement of U.S. unfair trade practice laws" (H.Rep. 96-317, p. 51) was cleverly aborted by the Japanese respondents and the International Trade Administration, Department of Commerce, acting under a new provision which had been incorporated into the 1979 Act at the request of the Treasury Department. Strangely, the Congress, dissatisfied with the failure of the Treasury

Department to prevent domestic industry from being injured by the unfair practice of dumping through long-delayed and ineffective assessment of dumping duties, adopted a recommendation of the Department whose concept and effect was to perpetuate the very frustration of the basic remedy intended by the Act - correction of dumping established in an antidumping investigation by prompt assessment of dumping duties in an amount equal to the dumping margins found to exist in the investigation. Treasury's recommendation was incorporated into the 1979 Act as Sec. 736 (c). It permits the Commerce Department to ignore the facts and determination of dumping margins involved in the antidumping duty investigation, to waive the requirement for the deposit of estimated antidumping duties in the amount of the margins of dumping previously established, and to redetermine within 90 days the dumping margins on the basis of new information submitted by the respondents within 7 days of the date of the antidumping duty order covering the entries made for a new period of time - different from that used in the antidumping duty investigation - viz., the brief period between the date of withholding of appraisement and the decision of material injury by the I.T.C.

In other words, Congress, and the Committee on Ways and Means, was persuaded under ground rules which permitted no amendments of the bill drafted by the Administration, to accept a provision whose purpose and effect is to enable foreign respondents to wipe the dumping slate clean after a domestic industry wins the dumping case. All the foreign respondents have to do is to change certain terms pertinent to the sale of the merchandise in the foreign market and in the United States market for a brief period, extend- ing from the date of withholding of appraisement until the date of the I.T.C.'s determination of injury, and on the basis of the altered facts, erase the effect of the antidumping duty order.

The Japanese manufacturers, ably advised by their sophisticated U.S. antidumping counsel, astute in their planning to avoid the actual correction through antidumping duties of their unfair competitive advantage based on their major margins of underselling of Smith-Corona's machines, lost no time in availing themselves of this unfortunate provision of the new Act. The largest Japanese manufacturers, Brother Industries, Ltd. and Silver-Seiko Ltd., promptly filed their new data within the 7 days period following the publication of the antidumping duty order. The Commerce Department dutifully set aside the prior determination of dumping margins, reviewed the new data, and in a determination published August 13, 1980, Federal Register, Vol. 45, pp. 53853-56, but dated on the 90th day following the antidumping duty order of May 9, 1980, massively reduced its determination of dumping margins. Brother Industries' margin was cut from 48.70 percent to 4.33 percent; Silver-Seiko, from 36.53 percent to 7.14 percent (Royal Business Machines was held to a dumping margin of 35.58 percent on private label machines made for it by Silver; other private label importers from Silver, to 14.9 percent, except Olivetti, 7.14 percent). Federal Register, Vol. 45, p. 53855; Vol. 46, p. 14006-7, Feb. 25, 1981.

This massive reduction in dumping margins was accomplished by means of a host of improper interpretations of the Act and the underlying Congressional intent, which will be discussed in Section 2 below. First, it is pertinent to look deeper into the understanding which the Congress had of the purpose and intended manner of administration of Sec. 736(c) of the Act.

That provision of the law was but one part of a master plan adopted by the Committee and the Congress with the objective of achieving genuine reform in the administration of the antidumping law which would provide the protection from unfair methods of competition which had been denied domestic industry under the Treasury Department's administration of the law. It is simply beyond belief that this Committee and the Congress intended that Sec. 736(c) be administered so as to negate the basic reforms which were their primary objectives in overhauling the antidumping law. Thus, the Committee on Ways and Means discussed its objectives in the following manner in its report on the bill which became the Act:

> _First_, the Committee was dissatisfied with the administration of the antidumping law by the Treasury Department, the policies it applied in that administrative effort, and by the unreasonable delay in the assessment and collection of antidumping duties:
>
> > "The Committee has long been dissatisfied with the administration of the antidumping and countervailing duty statutes by the Treasury Department. Investigations and determinations are often too lengthy, and assessment and collection of duties are often unreasonably delayed. * * *. Given Treasury's performance over the past 10 years, many have questioned whether the dumping and countervail investigations and policy functions should remain in the Treasury Department. The Committee believes that streamlining the process and establishing an organization with critical skills including cost accounting and more sophisticated knowledge of foreign business and government practices are essential to effective administration of the antidumping and countervailing duty responsibilities." (H. Rep. 96-317, p. 24).
> >
> > "The Committee is very dissatisfied with the past record of the Secretaries of the Treasury in assessing duties on entries subject to a dumping finding. Unless dumping duties are assessed in a timely fashion, the remedial effect of the law is negated." (H. Rep. 96-317, p. 69).

Second, the Committee was quite concerned that the antidumping law be administered by the new administrative authority so as to carry out the intention of the Congress that unfair trade practices be prevented from placing domestic producers in jeopardy:

> "Congress has long been concerned that the administration of the unfair trade practice laws has not effectuated its intention to prevent such unfair trade practices from placing domestic producers in jeopardy. Through the changes in present law made by this Title, the Committee reaffirms its intention that these unfair trade statutes be administered in a manner that will prevent such practices." (H. Rep. 96-317, pp. 45-6).

Third, against that background of intent and purpose, the Committee had a singular understanding and intent for the new Sec. 736(c):

> "The Committee recognizes the effect that the requirement of a cash deposit of estimated duties may have on importers, particularly small businesses, and does not wish to unduly burden those importers who have, in fact, taken steps to eliminate dumping. The six month rule on assessment reflects this concern. Although the Committee fully intends that the time limits on assessments will occur much earlier in many cases, it believes that the bill will offer further protection to importers who are cooperating in supplying information by ensuring that their funds will not be tied up for an unnecessary period of time.
>
> "Further, the bill provides a limited exception to the requirement of a deposit of estimated duties for importers who have taken steps to eliminate or substantially reduce dumping margins between the date of the affirmative preliminary determination by the Authority and the affirmative determination by the ITC. Thus, for a three month period following the issuance of an antidumping order, the Authority may continue to permit entry of merchandise subject to the order under bond for individual importers if it has reason to believe that those importers have taken steps to revise their prices to result in a significantly lower dumping margin. During this three-month period, the Authority will examine the merchandise entered during the

> period between its preliminary and the ITC's final determination. If assessment on these entries can be made within the three month period in accordance with the procedures of section 751, then assessment will take place and the new dumping margins derived from this assessment will serve as the basis for the deposit of estimated duties on future entries." (Emphasis added). (H. Rep. 96-317, pp. 69, 70).

The specific intent reflected by the above quotation from the Committee's report may be summarized as follows: (1) the 736(c) procedure was intended primarily as a means of assistance to small business importers; (2) if the importers revised their prices to eliminate or reduce the dumping margins found by the administering authority in the antidumping investigation.

That intent does not extend to the type of organizations involved in the portable electric typewriter dumping case: (1) the importers are the wholly owned U.S. sales affiliates of the Japanese manufacturers, not the type of independent small business organizations envisaged by the Committee; and (2) the type of unilateral increase in their U.S. selling prices by independent small business importers contemplated by the Committee did not occur in the portable electric typewriter case. Rather, the multinational Japanese corporations manufacturing, exporting, and (directly and through their whollyowned affiliates in the U.S.) importing and selling the machines in the United States did not eliminate or reduce the previously established dumping margins by raising the selling price in the United States, but instead orchestrated alleged special discounts of home market prices, and made increased claims for adjustments in the home market prices on the basis of alleged differences in merchandise and differences in circumstances of sale. They planned ahead to activate Sec. 736(c) by circumstancing their data for the Commerce Department's favorable examination of their prices and claims for reductions in home market prices for the narrow four month period (January 2 to May 9, 1980 in the PET case) which Sec. 736(c) unwisely makes the basis for the redetermination of dumping margins.

The Commerce Department reduced the dumping margins for duty-assessment and estimated duty purposes, not on the basis of the type of unilateral increases in the U.S. selling prices by independent small business importers intended by this Committee, and by the Congress, but rather on the basis of the Commerce Department's unwarranted and improper acceptance of the total scenario of specially discounted home market prices and specially augmented claims for cost differences and differences in circumstances of sale between home market and exported typewriters put forward by the Japanese respondents, as the basis for their claims for downward adjustments in home market prices. The low United States prices at which the Japanese typewriters were sold during the four month period, which continued to undercut SmithCorona's prices by wide margins, were in fact reduced in contrast with the Committee's intent for Sec. 736(c) determinations. When they had sized up the Commerce Department's reaction to their four-month data, they resumed export shipments at high volume, secure in the belief that they had avoided any meaningful assessment of antidumping duties which would materially interfere with their aggressive price undercutting of Smith-Corona domestic machines.

U.S. Imports for Consumption
Portable Electric Typewriters, TSUSA 676.0510
1979-1980, Jan.-May 1979/80/81, Jan-Sept. 1979/80/81

(Quantity in units; Value in $1,000, C.I.F.)

	Japan	Singapore	W.Germany	E.Germany	U. K.	Other	Total	Japan as % of Total
1979:								
Quantity	443,251	193,562	34,056	20,448	74,990	66,843	833,150	53.2%
Value	$55,014	$22,567	$6,905	$2,231	$16,410	$10,526	$113,653	
Unit value	$124.11	$116.59	$202.75	$109.11	$218.83	$157.47	$136.41	
1980:								
Quantity	511,312	205,728	26,379	6,782	56,821	74,532	881,554	58.0%
Value	$64,127	$24,229	$4,723	$710	$12,924	$12,878	$119,591	
Unit value	$125.42	$117.77	$179.04	$104.69	$227.45	$172.78	$135.66	
Jan-May 1979:								
Quantity	163,517	68,355	17,791	12,384	31,634	29,467	323,148	50.6%
Value	$20,502	$7,571	$3,218	$1,315	$6,833	$5,408	$44,847	
Unit Value	$125.38	$110.76	$180.88	$106.19	$216.00	$183.53	$138.78	
Jan-May 1980:								
Quantity	233,706	95,695	7,875	2,217	19,121	22,575	381,189	61.3%
Value	$28,595	$11,179	$1,968	$234	$4,557	$2,344	$48,877	
Unit Value	$122.35	$116.82	$249.90	$105.55	$238.32	$103.83	$128.22	
Jan-May 1981:								
Quantity	246,124	54,524	13,721	8,302	14,325	6,207	343,203	71.7%
Value	$33,227	$6,415	$2,053	$1,007	$4,061	$519	$47,282	
Unit Value	$135.00	$117.63	$149.62	$121.30	$283.49	$83.61	$137.77	
Jan.-Sept. 1979:								
Quantity	324,908	145,495	27,829	19,872	57,573	58,002	633,679	51.3%
Value	$40,318	$17,285	$5,245	$2,165	$12,653	$9,067	$86,733	
Unit value	$124.09	$118.80	$188.47	$108.95	$219.77	$156.32	$136.87	
Jan.-Sept. 1980:								
Quantity	412,676	170,494	14,316	6,494	40,316	67,616	711,912	58.0%
Value	$51,072	$20,085	$3,242	$680	$9,094	$11,935	$96,108	
Unit value	$123.76	$117.80	$226.46	$104.71	$225.57	$176.51	$135.00	
Jan.-Sept. 1981:								
Quantity	467,959	122,515	21,969	10,491	22,065	9,619	654,618	71.5%
Value	$63,751	$14,259	$3,142	$1,266	$6,475	$1,039	$89,932	
Unit value	$136.23	$116.39	$143.02	$120.67	$293.45	$108.02	$137.38	
Percent change:								
Year 1979-1980:								
Quantity	+15.4%	+6.3%	-22.5%	-66.8%	-24.2%	+11.5%	+5.8%	
Unit value	+1.1%	+1.0%	-11.7%	-4.1%	+3.9%	+9.7%	-0.5%	
Jan.-May 1979/1980:								
Quantity	+42.9%	+40.0%	-55.7%	-82.1%	-39.6%	-23.4%	+18.0%	
Unit value	-2.4%	+5.4%	+38.2%	-0.6%	+10.3%	-43.4%	-7.6%	
Jan.-May 1980/1981:								
Quantity	+5.3%	-43.0%	+74.2%	+274.4%	-25.1%	-72.5%	-10.0%	
Unit value	+10.3%	+0.7%	-40.1%	+14.9%	+19.0%	-19.5%	+7.4%	
Jan.-Sept. 1979/1980:								
Quantity	+27.0%	+17.2%	-48.6%	-67.3%	-30.0%	+16.6%	+12.3%	
Unit value	-0.3%	-0.8%	+20.2%	-3.9%	+2.6%	+12.9%	-1.4%	
Jan.-Sept. 1980/1981:								
Quantity	+13.4%	-28.1%	+53.5%	+61.5%	-45.3%	-85.8%	-8.0%	
Unit value	+10.1%	-1.2%	-36.8%	+15.2%	+30.1%	-38.8%	+1.8%	

Source: U.S. Dept. Commerce, Bureau of Census, IA 245X; IM 146; IM 145X.

Notice that, as established by the data in the above table, the average unit value, landed cost basis (i.e., c.i.f.; typewriters are duty free) of portable electric typewriters from Japan in the first 5 months of 1980 was lower than in the like period of the year 1979. Notice further that there was only a 1.1% overall increase in the average unit value of Japanese machines for the entire year 1980 compared with the year 1979. Those data show that there was no upward adjustment by the Japanese of their selling prices to the United States either during the first months of 1980, or in the entire year relative to the prices in 1979, the period of the dumping investigation. Indeed, adjusted for inflation, the U.S. selling prices of Japanese machines declined significantly in the precise period during which the Commerce Department found that the dumping margin had been virtually eliminated.

Even in 1981, the increase in the average unit landed cost of the Japanese machines was far less than the increase in Smith-Corona's prices which in turn were far less than the increase in the Producer Price Index for finished goods. As a result, Smith-Corona's average unit price in both 1980 and 1981, although increased, was markedly suppressed below the increase in cost. The Japanese margin of underselling, as was the case during the period of investigation (Nov. '78 - April '79), continues to approximate the average margin of dumping of 37.12 percent established in that investigation. This dramatically illustrates how the Commerce Department review in the "quick" Sec. 736(c) proceeding effectively eliminated the corrective action of the Act.

2. The role of improper interpretations of the Act and of Congressional intent by the Commerce Department in effecting the massive reduction in dumping margins under the "quick" review procedure of Sec. 736(c) of the Act.

(a) As background for the discussion which follows of the actual interpretation and administration of the Act by the Commerce Department in effecting the massive reduction of the dumping margins in the Sec. 736(c) review, consideration is invited to the following three-part concise summary of the pertinent Congressional intent, based upon the excerpts from the legislative history presented at pages 18 to 23, and the additional references to the legislative history contained in the Appendix. The footnote references in the 3-part summary are to the designated excerpts from the legislative history:

I. The Congress intends a vigorous enforcement of the antidumping law,(i)/ so as to assure a swift and certain response to foreign price discrimination (dumping)(ii)/. To carry out this intent, the Congress in 1974 required the Treasury Department to require the submission of certified import invoices which include data on home market prices and the purchase prices of imported merchandise,(ii)/ and it amended the definition of purchase price so as to prevent artificial reduction or elimination of dumping margins.(iii)/ Notwithstanding the 1974 amendments, and its manifest intent for more effective and vigorous enforcement of the antidumping law, the Congress has continued to be dissatisfied with the administering agency's failure vigorously to enforce the antidumping law(iv)-(v)/. In the 1979 Act, the Congress reaffirmed its intention that the antidumping law be administered so as to prevent dumping from placing domestic producers in jeopardy.(v)/ If foreign producers use dumping to abuse U.S. markets, and/or if they use price discrimination to make a raid on U.S. industries and jobs, the Congress intends that they receive very prompt action under the antidumping law.(xiii)/ The intent of the Congress in making the antidumping law amendments in the 1979 Act was to assure a swift and certain response to dumping by tightening enforcement procedures(xiv)/ so as to provide quick and certain relief for domestic industries which are injured by dumped imports.(xiv)/ In enacting the 1979 Act, the Congress intended that the administration keep the pledges made that American workers' jobs be protected from unfair competition.(xiv)/

II. Dumping is one of the most pernicious practices that distort international trade to the disadvantage of the United States.(vii)/ "Dumping" is the general term describing the practice of foreign producers selling in another country's market at prices less than they sell the like merchandise in their home market.(vii)/ The Congress intends that such price discrimination be corrected by the imposition of antidumping duties on imported goods when they are sold for less than in the exporting country's market. The antidumping duty is designed to offset the price difference.(viii)/ Unless dumping duties are assessed in a timely fashion, the remedial effect of the antidumping law is negated.(ix)/ The Congress intends, therefore, that the administering Authority act vigorously to collect dumping duties equal to such difference, and to use all means at its disposal to ensure timely collection. Specifically, the amount of dumping duties to be assessed and collected is equal to the difference between the statutory foreign market value (i.e., the home market price) and the statutory United States price, which includes purchase price and exporter's sales price. These terms are unchanged in meaning in the 1979 Act, which made no substantive changes in these basic concepts by which actionable price discrimination, and the dumping margin and amount of antidumping duties to be assessed and collected, are measured, except the date of sale to be used for purchase price where an unrelated middleman is involved.Appendix/ Each of these critical terms is defined in terms of market price, with costs to be used in the definition of constructed value only when the market prices at which merchandise is offered or sold are not available. (vii),Appendix/

III. In making this price comparison, adjustments to home market price will be permitted only under the following conditions: (1) the claimed adjustments are for differences in circumstances of sale, quantities sold, or differences in the merchandise sold;(x, xi)/ (2) differences in circumstance of sale are limited to credit terms, warranties, differences in the level of trade, and assumption by a seller of a purchaser's advertising or selling costs and commissions;(x)/ (3) such claimed adjustments are to be allowed only if they are reasonably identifiable, quantifiable, and directly related to the sales under consideration;(xii)/ (4) there is clear and reasonable evidence of their existence and amount;(xii)/ the claimed differences have a reasonably direct effect upon the sales prices being compared;(xii)/ and the adjustment would have a meaningful effect upon competition between the imported article being investigated and the like product produced by the domestic industry(xi)/ by contributing to an elimination of the unfair price competition for the dumped imports. The Congress intends that each of these conditions be respected, because if adjustments are improperly made, the result may be an unjustifiable reduction in or elimination of the dumping margin.(xii)/ The Congress intended to make significant improvements "to better protect American producers against unfair foreign competition," such as dumping, by severely restricting discretionary "offsets" against dumping margins.(xiv)/

The pertinent portions of the Committee reports and Congressional debates, upon which the foregoing concise summary of the manifest legislative intent is based, are presented below:

(i) "The Committee over the years has sought a more vigorous enforcement of the unfair foreign trade practice stat- utes, including the Antidumping Act of 1921, which deals with injurious price discrimination". (S. Rep. 93-1298, to the Trade Reform Act of 1974, p. 169).

(ii) "The Committee's intention generally has been to assure a swift and certain response to foreign * * * price discrimination (dumping) and other unfair foreign trade practices, through the revision of U.S. laws.

* * * * * * * * * *

"The bill would make several significant changes in the antidumping statute to improve the U.S. response to foreign price discrimination practices.

> 1. Home market prices.--The Committee bill would direct the Secretary of the Treasury to require that certified import invoices include data reflecting the home market price and the purchase price of each article imported in the U.S. * * * ." (S. Rep. 93-1298, p. 32).

(iii) "Purchase Price.--* * *. The first amendment would eliminate an anomalous provision dealing with the treatment of export taxes in the computation of purchase price and provides * * * that such taxes will be subtracted from, rather than added to purchase price, if included therein, so as to avoid an artificial reduction or elimination of dumping margins that may be present. Since dumping is generally defined to exist when the foreign market value is higher than the purchase price in the United States, increases in the purchase price tend to reduce or eliminate the amount of the dumping margin which might otherwise be found to exist." (Emphasis added). (S. Rep. 93-1298, p. 172).

(iv) "The Committee has long been dissatisfied with the administration of the antidumping and countervailing duty statutes by the Treasury Department. Investigations and determinations are often too lengthy, and assessment and collection of duties are often unreasonably delayed. Staffing in terms of manpower clearly is inadequate. Far too little attention has been paid to the need for qualified specialists such as engineers and accountants to deal with the growing complexity of countervailing duty and antidumping cases. The Trade Agreements Act of 1979 has addressed these problems with accelerated timetables and other administrative reforms." (H. Rep. 96-317, p. 24).

(v) "Congress has long been concerned that the administration of the unfair trade practice laws has not effectuated its intention to prevent such unfair trade practices from placing domestic producers in jeopardy. Through the changes in present law made by this Title, the Committee reaffirms its intention that these unfair trade statutes be administered in a manner that will prevent such practices." (Emphasis added). (H. Rep. 96-317, p. 45-6).

(vi) "The Committee feels very strongly that both the countervailing and antidumping duty laws have been inadequately enforced in the past, including the lack of resources devoted to this important area of law. The provisions of this bill are intended to remedy this situation." (H. Rep. 96-317, p. 48).

(vii) "Subsidies and dumping are two of the most pernicious practices which distort international trade to the disadvantage of United States commerce. * * *.

"Dumping is the general term for selling in another country's market at prices less than 'fair value'. Fair value is usually determined by the exporter's comparable home market price, though the exporter's price in a third country market, or the constructed value of his merchandise, may be used to determine fair value in appropriate circumstances. Antidumping duties are special duties imposed to offset the amount of the difference between the fair value of the merchandise and the price for which it is sold in the United States, i.e., the dumping margin." (Emphasis added). (S. Rep. 96-249, p. 37).

(viii) "In general, antidumping duties may be imposed on imported goods when they are sold for less than in the exporting market and when an industry in the importing country producing a like product is materially injured, threatened with material injury, or the establishment of such an industry is materially retarded by reason of imports of that merchandise. The antidumping duty is designed to offset the price difference". (Emphasis added). (H. Rep. 96-317, p. 44).

(ix) "The Committee is very dissatisfied with the past record of the Secretaries of the Treasury in assessing duties on entries subject to a dumping finding. Unless dumping duties are assessed in a timely fashion, the remedial effect of the law is negated." (H. Rep. 96-317, p. 69).

(x) "Regulations will establish groups of adjustments based on types of adjustments currently recognized, that is, differences in circumstances of sale (e.g. credit terms, warranties, differences in the level of trade, and assumption by a seller of a purchaser's advertising or selling costs and commissions), quantities sold, and differences in the merchandise compared." (Emphasis added). (H. Rep. 96-317, p. 76).

(xi) "Regulations will establish groups of adjustments based on types of adjustments currently recognized, i.e., differences in circumstances of sale, quantities sold, qualitative characteristics, and levels of trade in the markets being compared. In any event, if any adjustment or group of adjustments having a small ad valorem effect have, individually or cumulatively, a meaningful effect on competition between the imported articles being investigated and the like product produced by the domestic industry, then such adjustments should not be disregarded.

"This report is not intended as a general expression of approval or disapproval of current regulations or administrative practice." (Emphasis added). (S. Rep. 96-249, p. 96).

(xii) "Such adjustments to the price of similar merchandise sold in the exporter's home market or third country markets are appropriate in determining FMV. However, if adjustments are improperly made, the result may be an unjustifiable reduction in or elimination of the dumping margin. Therefore, the Committee intends that adjustments should be permitted if they are reasonably identifiable, quantifiable, and directly related to the sales under consideration and if there is clear and reasonable evidence of their existence and amount". (Emphassis added). (H. Rep. 96-317, p. 76).

(The above quoted language is obviously based upon, and adopts the antecedent construction by the United States Customs Court of the statutory language permitting adjustments under defined conditions for differences in circumstances of sale which affect and account for all or part of the difference in the market prices being compared (i.e., the prices on which, respectively, foreign market value and United States price are based) as articulated in F. W. Myers & Co. v. United States, 72 Cust. Ct. 219, C.D. 4544 (1974), where in discussing the amendment of the Antidumping Act, 1921, to provide for the circumstances of sale adjustment, the Court said:

> "Obviously, the term 'differences in circumstances of sale' is not subject to precise definition, and there is no hard and fast rule for determining what such differences will be in a given case. It is clear, however, from the foregoing statements that this amendment was designed and intended to allow an adjustment in calculating foreign market value only for those factors and conditions which have a reasonably direct bearing on, or relationship to, the sales under consideration. Thus, although the cost factors might vary considerably in each case, depending upon the kind of merchandise involved, the sales and marketing practices, and other conditions, all would have one common element--a reasonably direct effect upon the sales under scrutiny.
>
> "Therefore, the adjustment allowed under section 202(b)(2)(19 U.S.C. 161(b)(2)) does not permit, as plaintiffs have done, the indiscriminate lumping together of all overhead expenses such as administrative, general financial management and selling expenses into a stewpot labeled 'differencew in circumstances of sale.' Rather, it must be shown that each claimed expense had a reasonably direct effect upon the sales in the market under consideration." (Emphasis added). (72 Cust. Ct. 233-234)).

(xiii) During the floor debate on the 1979 trade bill in the House of Representatives, the following colloquy with Cong. Vanik, Chairman of the Subcommittee on Trade, Committee on Ways & Means, and floor manager of the bill:

"Mr. ROUSSELOT. Do we have under this legislation some check on the executive branch if we feel they are not moving properly or utilizing these tools?

"Mr. VANIK. We always have the option of legislative initiative. If the process does not work through regulation and through the law as we have written it, with the implementing legislation, we always have the opportunity to provide legislative mandates. I have always told our trading partners they should not take lightly the attitudes in the U.S. Congress. I have told them if they would abuse our markets, if they make a raid on our industries and our jobs, they can expect very, very prompt action. * * *." (Emphasis supplied). (Cong. Rec. (daily edition) July 10, 1979, p. H 5551).

(xiv) During the floor debate on the 1979 trade bill in the United States Senate, the following remarks of Senator Ribicoff, floor manager of the bill, and of other members of the Senate Finance Committee, describing the understanding and intent of the Committee (and thus, of the Senate) are of particular pertinence as instructive background to a consideration of the actions of the Commerce Department in massively reducing the dumping margins on portable electric typewriters in the Sec. 736(c) review:

> Mr. RIBICOFF: "We believe that the new MTN agreements on subsidies, Government procurement, product standards, antidumping, customs valuation, and import licensing, should result in more American exports and in more discipline on unfair practices in international trade.
>
> "The Trade Agreements Act establishes the legal basis for the United States to enforce these agreements. Among other things, it will provide domestic parties an opportunity to get relief when foreign governments violate the agreements. It will also completely revise the countervailing duty and antidumping laws to provide quick and certain relief for domestic industries which are injured by dumped or subsidized imports." (Congressional Record, daily edition, July 23, 1979, pp. S10296-7).
>
> "Mr. ROTH: Potentially, the MTN codes can be of great importance to American industries and workers. Each code establishes guidelines which, if followed, will restrict the use of unfair or trade-disrupting practices in the area it addresses. * * *.
>
> * * * * * * * * * * * * * *
>
> "In reviewing antidumping and countervailing duty legislation, we made significant improvements to better protect American producers against unfair foreign competition. The time periods for Treasury and ITC determinations have been reduced. The use of discretionary 'offsets' have been severely restricted. The verification of information submitted by foreign governments is required, and other important protections have been built in. (Cong. Rec., daily ed., July 23, 1979, pp. S1097-8).
>
> "Mr. DOLE: As a result of this package, our Government should move faster and more effectively against imports which harm our domestic industries through unfair foreign trade practices such as dumping and subsidization." (Cong. Rec., daily ed., July 23, 1979, p. S10316).

> "Mr. DANFORTH: I am a cosponsor of H.R. 4537 (the Trade Agreements Act of 1979). The legislation contains many improved procedures for enforcing the law on our books--specifically, the 1921 Antidumping Act and the Tariff Act of 1930, the countervailing duty law. Many of the provisions against unfair foreign competition embodied in H.R. 4537 are similar to provisions and concepts embodied in S. 223, a bill which I introduced earlier this year along with 20 of my colleagues.
>
> "That bill, and S. 3127, introduced in the 95th Congress, were based on the belief that such unfair trade practices as dumping and sales of subsidized goods, although clearly proscribed under long existing law, were, until the passage of H.R. 4537, without timely and effective remedy because the enforcement procedures under existing law were inadequate. The concepts embodies in S. 223 and now found in H.R. 4537 would continue the process, begun in the Trade Act of 1974, of assuring a swift and certain response to illegal dumping and sales of subsidized goods by tightening enforcement procedures." (Cong. Rec., daily ed., July 23, 1979, pp. S10316-7).
>
> "Mr. MOYNIHAN: But I am here to say that I altogether support the bill before us, but I support it on the condition that the pledges made by the administration that American workers' jobs will be protected from unfair and often dishonest dealing will be kept. They can be. But remember that the trust imposed upon us in recommending this bill to the Senate is a trust that extends past its passage this afternoon. It extends into a generation of trade practices ahead when Americans will train themselves and equip themselves to defend the rights which we obtain under this new treaty. (Cong. Rec., daily ed., July 23, 1979, pp. S10320-21).

(c) In its "quick review" of, and massive reduction in, the dumping margins, the International Trade Administration made the following determinations, each of which is in conflict with the foregoing legislative intent:

(1) The Commerce Department totally disregarded the statutory requirement for the establishment of a causal connection between the differences in the market prices being compared and the alleged differences in circumstances of sale.

The Commerce Department failed to require the respondents to submit evidence, and there was no evidence submitted by the respondents, concerning the condition precedent specified in the statute [Sec. 773(a)(4)] that such adjustments be considered only where "it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value * * * is wholly or partly due to" the claimed differences in circumstances of sale.

The Commerce Department's antidumping duty regulations contain a requirement consistent with the statute, as quoted above, and the Commerce Department ignored this provision of its governing regulations, as well as ignoring the requirement of the statute. Thus, subsection (a) of Section 353.15 of the Regulation states that "reasonable allowances will be made for bona fide differences in the circumstances of sales compared to the extent that it is established to the satisfacton of the Secretary that the amount of any price differential is wholly or partly due to such differences". Despite the clear directions, no evidence was required, or submitted upon which the Secretary's required determination that this condition precedent to the granting of an allowance could be based. The Commerce Department simply assumed that where an allowance for circumstances of sale was claimed, and evidence of these expenses was offered, the allowance should be granted. In so doing, it violated the statute, its own regulation, and acted contrary to the legislative intent that the claimed differences in circumstances of sale be shown to have a reasonably direct effect upon the sales prices being compared (xii)/ and a meaningful effect upon competition between the imported article being investigated and the like product produced by the domestic industry.(xi)/

The action of the Commerce Department in assuming the existence of a fact which the statute (and the regulation) requires as a condition precedent to the making of adjustments in the home market price also violates SCM's right as an interested party and violates the intent of Congress as specified in the statute that determinations of the Commerce Department be based upon substantial evidence.

In proceeding in this unlawful manner, the Commerce Department purported to rely on the provisions of subsection (d) of Sec. 353.15 of the Regulations. That subsection was designed to describe how the amount of adjustment would be determined once it was decided under subsection (a) that an adjustment is proper. Subsection (d) states:

> "(d) Determination of allowances. In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the cost of such differences to the seller, but, where appropriate, he may also consider the effect of such differences upon the market value of the merchandise.

The subsection posits an invalid guideline for determining the amount of allowance. But in no event would the Commerce Department be justified in reaching the use of that guideline until it had requested, received, and evaluated evidence on the record which reasonably established that the conditions of the statute, and of subsection (a) of the regulation, were satisfied. This did not occur.

Subsection (d) is invalid, in any event, because it makes costs the primary norm for measurement of the amount of allowance to be granted, a factor the statute and subsection (a) of the regulation exclude from consideration. Both the statute and subsection (a) of the regulation refer to the differences in the prices being compared being due in whole or in part to the claimed differences in circumstances of sale. In that respect, both the statute and subsection (a) are consistent with the legislative intent that dumping be measured by differences in prices[xii/], that "offsets" to prices be severely restricted so as to give better protection to American producers injured by dumping,[xiv/] and that great care be exercised by the Commerce Department not to make improper adjustments because the result may be an unjustifiable reduction in or elimination of the dumping margin.[xii/]

This history of subsection (d) highlights its illegality in focusing the measurement of the allowance for claimed differences in circumstances of sale on cost differences. The regulations first provided for an adjustment based on cost in the 1960 Treasury Department amendments to the antidumping regulations. The Treasury Department regulations specified at Section 14.7(b)(2) the adjustments to foreign market value would be permitted if "the amount of any price differential is wholly or partly due to" the alleged differences in circumstances of sale. (Emphasis added). T.D. 55118, 95 Treas. Dec. at 232, 25 Fed. Reg. 3948 (1960). That amendment of the Treasury Regulations then stated that if the prerequisite for an adjustment were established, namely the causal relationship between the claimed adjustment and the price differential being investigated, then Treasury would "be guided primarily by the effect of such differences upon the market value of the merchandise," but, where appropriate, the agency might also consider the cost of such differences to the seller, as contributing to an estimate of market value. Id., 25 Fed. Reg. at 3949.

Since constructed value (which is based upon production costs plus an addition for general expenses and profit) may at least theoretically have been used in lieu of foreign market value where the home market and third country prices were less than the cost of production [see Sec. 205-(b), Antidumping Act, 1921, 19 U.S.C. 164(b)], it might have been appropriate in a particular case (though rare) to consider the cost of the claimed differences. But this would be true only if the threshold requirement had been met of an evidentiary establishment of the fact that the difference in the price, and the effect upon competition between the imported article being investigated and the like domestic product was due in whole or in part to the claimed difference in circumstance of sale. The essential point is that the primary consideration should, as Treasury's Regulation implementing the amendment of the statute specified, be given to evidence showing the effect of the claimed difference in circumstances of sale on market value, which is established by price.

Treasury's antidumping regulation, as above described, continued in effect for 16 years. Then, on June 25, 1976, Treasury published an amendment to what was then numbered as Sec. 153.10 of the regulations to provide that the determination of the amount of adjustment for differences in circumstances of sale would be based primarily on the cost of such differences to the seller. In its explanatory commentary on the change, Treasury stated that the change was "intended to reflect long existing Treasury practice". 41 Fed. Reg. 26203. Such a statement, if true, indicates that Treasury had been violating its own regulations, and certainly was violating the language of the 1958 amendment to Sec. 202 of the 1921 Act.

(2) The next fundamental error made by the Commerce Department in achieving its massive reduction in the dumping margins, was to ignore the requirement, articulated in the legislative history, and in the judicial construction of the statute, that allowances be granted for alleged differences in circumstances of sale only where the claimed allowances are directly related to the sales under consideration, there is clear and reasonable evidence of their existance and amount, and the claimed differences have a meaningful effect upon competition between the imported article being investigated and the like product produced by the domestic industry.(xi, xii)/ These unlawful allowances included the following:

(1) adjustments for "after sale rebates" viz., volume rebates made by the Japanese producers to purchasers in the home market, where the rebate was based on the volume of business done over an extended period of time, and in relation to purchases of merchandise in addition to portable electric typewriter sales under investigation. Such rebates were in no event the "assumption by a seller of a purchaser's advertising or selling costs and commissions," as required by the legislative history.(x)/ Since they were made long subsequent to the transaction being compared, they obviously did not have a "reasonable direct effect upon the sales prices being compared" as required by the legislative intent.(xii)/ Moreover, there was no evidence

of the amount of any rebate specific as to the merchandise under investigation; and the Commerce Department allocated rebates based upon a hotch-pot of purchases of portable electric typewriters and other products sold during the 4 month period of the "quick review", thus violating the legislative intent that claimed allowances be "reasonably identifiable and directly related to the sales under consideration", and the teaching of the Myers case that determinatons of allowances for differences of sale be "based upon proof of actual costs or prices --not estimates, approximations or averages." (citation omitted). (Emphasis in the original). (72 Cust. Ct. at 234).

(2) adjustments for packing costs and inland freight charges allowed as deductions from the home market price are directly contrary to the explicit statutory definition of foreign market value, Sec. 773(a) of the 1979 Act, 19 U.S.C. 1677(b)(a). The statute requires that if not included in the price, an amount equal to the costs incurred in putting the imported merchandise in condition packed ready for export to the United States be added to the home market price in determining the foreign market value of the imported merchandise. No reference is made to deducting packing costs or inland freight costs. The allowance made by the Commerce Department, equivalent to a reduction of from two to three percentage points of the dumping margin, was plainly contrary to the language of the statute. The Commerce Department has attempted to justify the allowance on the ground that it is a difference in circumstance of sale. But no evidence was presented to indicate that the difference in the prices being compared was due in any degree to the packing costs and inland freight. Further, the allowance in the guise of a difference in circumstance of sale was clearly outside of the enumeration of permissible differences in the legislative history.[x/]

(3) An allowance for Brother's head office (indirect) expenses under the guise of advertising expenses. The Commerce Department granted an adjustment to the home market price for an amount of head office expenses which it allocated to portable electric typewriters on the basis of space devoted to advertising portable electric typewriters versus other products.

The advertising in question was Brother institutional advertising, touting the Brother line of products, rather than the assumption by Brother of the advertising expenses of purchasers. On several grounds the allowance violates the legislative intent: it is not the assumption by a seller of the purchaser's selling or advertising expenses incurred in the sale of the merchandise under investigation; it is not directly related to the sales under investigation; and had neither a direct effect upon the sales prices being compared or upon competition between the imported article being investigated and the like product produced by the domestic industry.(x,xi, xii)/

(3) The granting of claims by the foreign respondents for allowances by way of deductions from the home market price in the form of an "offset" of indirect selling expenses equal to the deduction of selling expenses specified in the statute in the determination of exporter's sales price, was in violation of the intent of Congress, and unlawful:

On the basis of a "special rule"*/ set out in its regulations at Sec. 353.15(c), the Commerce Department substracted from Brother's home market prices various indirect expenses, not directly related to the sales under consideration, and not in any way the assumption by the seller of the advertising or selling costs and commissions of the purchaser. These included payroll and payroll-related expenses, depreciation, other operating expenses, and indirect advertising and promotional premiums. The Commerce Department similarly deducted indirect selling expenses from Silver's home market prices. These deductions accounted for a quite large portion of the massive reduction in dumping margins.

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*/ "In making comparisons using exporter's sales price, reasonable allowances will be made for all actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market."

The simplistic rationale for allowing an offset of indirect selling expenses to the home market price equal to the amount of selling expenses which the statutory definition of exporter's sales price mandates, (Sec. 772(c), 1979 Act), ignores the purpose and essence of exporter's sales price. It is this: where the merchandise under investigation is imported by an entity related to the exporter (Sec. 771(13), 1979 Act), the transfer price of the imported merchandise is not an indication of its true value. The price is a function of the transfer-price accounting of parent and subsidiary, and is not a true reference point for determining price discrimination. Therefore the policy of the law, which has continued unchanged since 1921, is to look for the first arm's length transaction in which the imported merchandise is sold. This obviously occurs in the U.S. market after importation. That price includes the affiliated importer's expenses in bringing the merchandise into the United States, in warehousing it, and in reselling it. Thus, the law specifies that there be deducted from this arm's length resale price in the United States all the costs and expenses incurred by the affiliated importer in relation to his importation and sale of the merchandise. (Sec. 772(e), 1979 Act). When this subtraction is made, the residue is deemed by the law to be the amount (i.e., the constructed price) at which the exporter would have sold the merchandise at arm's length to an unrelated importer-purchaser. This derived arm's length price is called "exporter's sales price." It is equivalent to the concept of "purchase price," separately defined in the Act to be the price at which the exporter sells to an unrelated importer-purchaser. (Sec. 772(b), 1979 Act). When compared with the foreign market value (i.e., the home market price of the like merchandise), the purchase price and the exporter's sales price are interchangeably used to determine the dumping margin. In each case, deduc- tions from home market price for differences in circumstances of sale accord- ing to the clear intent of the Congress are limited to the assumption by a seller of a purchaser's advertising or selling costs and commissions,(x)/ to be allowed only if they are directly related to the sales under consideration, (xii)/ where there is reasonable evidence that the claimed differences have a reasonably direct effect upon the sales prices being compared,(xii)/ and have a meaningful effect upon competition between the imported article being investigated and the like product produced by the domestic industry.(xi)/

The so-called exporter's sales price "offset" allowed by the Commerce Department under the so-called "Special Rule" meets none of these requirements. It accomplishes precisely what Congress stated plainly the Authority must not do - make improper adjustments which unjustifiably reduce or eliminate the dumping margin. Far from restricting "offsets" against dumping margins, the "special rule" maximizes them to the clear detriment of American producers being injured by dumping.

We can illustrate this illegality of the exporter's sales price offset by reference to the typewriter case. When Brother Industries, Japan, ships to its U.S. affiliate, Brother International, who in turn resells to a U.S. purchaser, such as K-Mart, under the "special rule" the Japanese firm's indirect selling expense in Japan is subtracted from the home market price in an amount equal to the selling expenses deducted from Brother International's resale price to K-Mart to get back to a constructed arm's length price (called exporter's sales price). In other words, what was done on the U.S. side to determine a price for comparison with the home market price is wiped out by deducting the same amount from the home market price. On the other hand, when the export sale is at arm's length in the first instance, as in the case of a direct sale by Brother Industries Ltd., Japan, to Sears (a 'purchase price' transaction), there is no "offset" of the indirect selling prices in the Japanese market. (Unfortunately by virtue of the other illegal practices described in this statement, reductions in the home market price, and reductions in the dumping margin, are accomplished by another route.)

The Commerce Department regulation under which the Commerce Department improperly allowed the exporter's sales price "offset" in achieving its massive reduction in the dumping margins in the portable electric typewriter case was derived from an amendment to the Treasury Department regulations in 1976. At the same time that Treasury invalidly upended the guideline for determining the amount of allowance for differences in circumstances of sale (see discussion at pages 24-28, above), it also created the "special rule" which permitted an allowance "for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market" where price comparisons were made which involved exporter's sales price. 41 Fed. Reg. 26203, 26206. Once again, Treasury stated that the change was "intended to reflect long existing Treasury practice".

This "explanation" was no more than an euphemism for plainly illegal action by Treasury. The experts in the Customs Service on such matters, the Classification and Value Division, Office of Regulations and

Rulings, addressed the issue of the validity of the so-called exporter's sales price offset in connection with the wretched handling by Treasury of the matter of the assessment of dumping duties on television sets from Japan. The Division wrote on August 29, 1979, as follows:

> "such an allowance is clearly contrary to the statute and must not be granted in the instant protests" [because] the claimed allowance is "for an amount other than a difference as required by the Act". [Moreover], "[s]ince values derived under either exporter's sales price and purchase price are nearly identical, there is no justification for determining the foreign market values differently under section 202 of the Act, depending upon whether foreign market value is to be compared to purchase price or exporter's sales price".*

Despite Congressional dissatisfaction with the poor record of the Treasury Department in effectuating the intent of Congress for a vigorous and effective administration of the antidumping law, the new Authority simply incorporated wholesale those fiat devices by which Treasury managed to disregard the Congressional intent in its administration of the Act. The result is starkly revealed in the portable electric typewriter case. A domestic industry is being destroyed because of the failure and refusal of the administering agencies properly to enforce the antidumping law.

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* Classification and Value Division, Office of Regulations and Rulings, U.S. Customs Service, Antidumping: Televisions from Japan, T.D. 71-76: Points and Authorities in Support of Value Branch Task Force Protests Decisions at 24-25, August 29,1979. Accord, letter from Chief, Value Branch to Director, Classification and Value Division at 1-4, September 26, 1979.

Summary: By reason of maladministration, the antidumping law is not providing the type of protection against unfair competition from dumped imports that the Congress intends. Specifically, the portable electric typewriter industry is being destroyed under the eyes of the Commerce Department, and the Court. We have sought judicial relief from the manifest wrongs by which Commerce has slated our industry for certain destruction by the Japanese. Our latest Court case is fully briefed, and awaiting argument to the Court. An early decision is not expected, and when rendered, if favorable to SCM, will be appealed by the government and the Japanese, who are acting in concert in opposing us. Only the Congress has the power to move with the requisite speed to save our industry, and others similarly situated.

Accordingly, we respectfully ask that you do the following:

> Use your power of legislative oversight to direct the Commerce Department to obey the law and cease (1) waiving the statutory requirement to establish as a matter of evidence that the price difference under investigation (i.e., the dumping) is due to claimed differences in circumstances of sale, (2) failing to restrict the allowance of offsetting adjustments to those differences in circumstances of sale which are directly related to the merchandise under investigation, and (3) making adjustments which reduce or eliminate dumping margins by granting exporter's sales price offsets.

3. The evident intent of the Commerce Department further to weaken the enforcement of the antidumping law by proposed amendments to the Antidumping Duty Regulations.

The Commerce Department has submitted to the Under Secretary of Commerce for International Trade, through the Assistant Secretary of Commerce for Trade Administration, proposed amendments to the antidumping duty regulations. The proposed changes are extensive, and systematic. Their effect, and therefore their purpose, would be to weaken further the already unsatisfactory enforcement of the antidumping law. The proposed changes directly confront and contradict the intent of Congress in enacting the 1979 Act. The changes most directly pertinent to the type of administration which has resulted in the massive reduction of the margins of dumping which injured Smith-Corona are briefly discussed below:

> (1) Sec. 353.13 would be amended to indicate that "adjustments to foreign market value will be made whenever the Secretary determines an addition or deduction is appropriate for a fair comparison of prices in the markets concerned". This increased discretion for the Authority to tamper with market prices is inconsistent with the legislative intent which is sharply focussed upon a comparison of prices in the home market and export market, with a minimum of adjustments.[(viii), Appendix/] Treasury, and now the Commerce Department, operate contrary to this intent, and this proposed amendment will simply enhance the Commerce Department's emphasis on reducing home market prices to explain away the true margins of dumping.

(2) Sec. 353.14 would be amended to permit adjustments for differences in quantities on the basis of "bona fide differences in the cost of producing different quantities which result from economies of scale". Once again, the thrust of the change is to eliminate the statutory test, and ignore the legislative intent, that allowances for differences in quantities be made only where it is first demonstrated that the difference in the prices being compared is due in whole or in part to the claimed differences in quantity, and then to limit the allowance to the amount by which market value is in fact affected by the difference in quantity.(x, xi, xii)/

(3) Sec. 353.15, dealing with adjustments for differences in circumstances of sale, is already the principal vehicle by which Treasury, and now Commerce, is effecting massive reductions in dumping margins. Now the proposed amendments to the regulations would "substantially change" Sec. 353.15 so as even further "to expand the category of costs for which adjustments will be made".

Recall the quite explicit language in the legislative history restricting adjustments for differences in circumstances of sale to four specific categories of costs, and within those categories only to those claimed adjustments which are directly related to the sales under consideration.

The language of the statutory provision has not been changed, and the congressional committees adopted the language of the Court in the Myers case limiting such adjustments to those directly related to the sales under consideration where there is clear and reasonable evidence of their existence and amount, and their direct effect upon the sales prices being compared.(x),(xi),(xii)/ These legislative and judicial expressions preclude the allowance of adjustments for indirect, overhead type expenses.

Notwithstanding the abundant guidance contained in the legislative history of the 1979 Act, the Commerce Department would amend Sec. 353.15 to permit adjustments for differences "in both fixed and variable selling expenses", including such currently disallowable expenses as bad debt reserves, promotion and installation costs, and assumption of a purchaser's distribution (e.g., warehousing and transportation expense) and marketing costs (as distinct from the currently allowable advertising and selling expenses). The term "fixed expenses" is other language for indirect or overhead expenses. The Commerce Department is thus intent upon expanding the exporter's sales price "offset" to a "special rule" of general application. And to underline those intentions, the proposed amendments adopt a proposal made by the Japanese importers in the portable typewriter case expanding the offset "special rule" to permit adjustments for the entire amount of selling expenses in the home market. Moreover, intent upon expunging any vestige of the restrictions on allowances expressed in the legislative intent, the Commerce Department would amend the regulation to expand the guidelines for allowances so as to center attention upon expenses rather than the effect on market value and prices mandated by the statute, the legislative history, and the Court's construction of the statute.

(4) So pervasive are the intended changes in Sec. 353.15 that the Commerce Department proposes to repeal its regulation concerning "level of trade" adjustments (Section 353.-19), because "any level of trade adjustments would be captured in the liberalized circumstance of sale provision". Instead, a more elaborate rule is proposed under which importers may ask that prices be compared at any particular level of trade, instead as at present where all sales in the market concerned are investigated. Once again, the Commerce Department proposes focusing its attention on claimed differences in expenses or costs associated with sales at the designated level of trade rather than the type of comparison of prices which the statute and legislative history intend.

Rather than limiting consideration to claimed differences in expense directly related to the sales under consideration, the Commerce Department proposes allowing the "allocation or attribution of such expenses" in the books and records of the respondents. The requirement now in the regulations and the legislative history of the 1979 Act that adjustments "bear a direct relationship to the sales which are under consideration," has disappeared in the proposed amendments.

In combination these proposed changes in the rules for determining allowances for differences in circumstances of sale will totally emasculate the specific plan of the statute and the clearly stated Congressional intent. If adopted, unless and until overturned by a Court or the Congress through legislative oversight, these proposed amendments to the circumstances of sale provisions of the regulations will make the antidumping law virtually a dead letter.

Respectfully submitted,

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Appendix to
Statement in Support of
the Testimony of George F. Burns
President, Consumer Products Division, SCM Corporation
before the Subcommittee on Trade
Committee on Ways and Means
U. S. House of Representatives
December 16, 1981

Additional References from Legislative History
Cited to Text on Pages 21-23

(i) "The bill does not contain a provision specifically related to the collection of antidumping duties following an assessment. The Committee expects that its clear intent to expedite the entire antidumping proceeding should be carried out with respect to collection, since to do otherwise would negate the effect of the statute. In this connection, the Committee intends that the Authority shall act vigorously to collect dumping duties, using all means at its disposal to ensure timely collection. The Committee expects the Authority to devote sufficient resources to the collection process to ensure expeditious payment of antidumping duties." (H. Rep. 96-317, pp. 70-71).

(ii) "In the case of a review of an antidumping duty order, the results of the review will include a determination of the foreign market value and the United States price of each entry of merchandise subject to that order and included within the review, and the amount if any, by which the foreign market value of each such entry exceeds the United States price of the entry. That determination will be the basis for the assessment of antidumping duties on entries of the merchandise included within the review and for deposits of estimated duty on entries not covered by the review." (H. Rep. 96-317, pp. 71-72).

(iii) "Foreign Market Value (FMV).--The bill extends the concept of 'foreign market value' to embrace both the existing terms 'foreign market value' and 'constructed value.' This change is not substantive and is intended solely to simplify the law. Thus section 773(a) is a reenactment of the provisions of the Antidumping Act, with one significant modification, and describes the value against which the United States price is compared in assessing antidumping duties. Under present law, the price of goods in the United States is compared with FMV, that is, the value of comparable goods sold in the exporter's home market, third country markets, or constructed value. The bill does away with the preference for the use of third country prices over constructed value contained in present law." (Emphasis added). (H. Rep. 96-317, pp. 75-76).

(iv) "Section 773 of the Tariff Act of 1930, as added by section 101 of the bill, would generally retain existing law as it relates to the use and calculation of foreign market value and constructed value. The bill extends the conceptd of 'foreign market value' to embrace both the existing terms 'foreign market value' and 'constructed value.' This change is not substantive and is intended solely to simplify the law.

"The new 'foreign market value' term, which describes the value against which the United States price is compared in assessing antidumping duties, retains the substance of sections 205 and 206 of the Antidumping Act, with wording changes necessary to conform the provisions to the style and oreganization of the new law." (Emphasis added). (S. Rep. 96-249, p. 95).

(v) "United States Price.--The bill provides a new term, 'United States Price,' which embraces both the existing terms 'purchase price' and 'exporter's sales price.' The bill reenacts the provisions of the Antidumping Act with only one significant modification. The bill modifies the definition of purchase price to mean the price at which merchandise is purchased or agreed to be purchased prior to the date of importation, from the manufacturer or producer of the merchandise for exportation to the United States. The purpose of the modification is to provide statutory authority for the present administrative practice whereby if a producer knew that the merchandise was intended for sale to an unrelated purchaser in the United States under terms of sale fixed on or before the date of importation, the producer's sale price to an unrelated middleman will be used as the purchase price. Thus, the dicta in Voss International v. United States, C.D. 4801, (May 7, 1979) is explicitly overruled, * * *." (Emphasis added). (H. Rep. 96-317, p. 75).

(vi) "Under the Antidumping Act, 1921, in order to determine the amount of dumping duties to be imposed on an entry of merchandise, the 'purchase price' or 'exporter's sales price' of the merchandise is subtracted from the 'foreign market value' of such or similar merchAndise or the constructed value of the merchandise, as the case may be. * * *.

"The bill.--Section 772 of the Tariff Act of 1930, as added by section 101 of the bill, would provide a new term, 'United States price,' which embraces both the existing terms 'purchase price' and exporter's sales price.' The bill reenacts the provisions of the Antidumping Act with respect to these terms with one substantive change and one clarifying change. The bill modifies the definition of purchase price to mean the price at which merchandise is purchased or agreed to be purchased prior to the date of importation (as opposed to prior to the time of exportation as under existing law) from the manufacturer or producer of the merchandise (as opposed to the person by whom or for whose account the merchandise is imported) for exportation to the United States. * * *.

"Reasons for the provision.--Section 772 of the Tariff Act of 1930, as added by the bill, would generally continue existing law with respect to the meaning of purchase price and exporter's sales price." (S. Rep. 96-249, p. 93, 94).

Chairman Gibbons. Thank you. Of course, what you say very powerfully and very well is quite a condemnation of our Government as it applies to your case.

I don't want to put you on the spot, but I think this is the kind of thing that this committee was constituted to look at. You have got a lawsuit going, the exact nature of which I am not familiar with, although I am generally familiar with it.

I plan, if it does not meet with any serious objection from committee staff or our committee members here or from you all, to ask these people to come in and explain their position.

I want, and I think the majority of the committee wants, and I know others who have been in this position before, like Mr. Mills behind you there, want to have a rule of law and not a rule of men.

When we enact a law, we want it honestly and vigorously and timely carried out. There is no excuse for dragging feet on any kind of case, particularly a case where economic viability of an American concern depends upon the proper handling of responsibilities the Government has in its role.

I applaud you for your dogged determination in sticking to the rules, and we should reward you by giving you greater attention because you have stuck by them.

It saddens me deeply to hear about the problems of Smith-Corona. You mention that you had started out with Smith-Corona in 1939. Well, I am about the same vintage. I probably started batting on them around that time. I have two or three of them around the house now. I not only took it to college, but my sons took them to college, and we were very pleased with them.

So we want to do everything we can to make sure that you get justice and that you get it in a timely fashion. Certainly, no one can say that 8 years is timely, or 3 years is timely, or 5 years is timely. Timely is a year or so at the most.

Because of the lawsuit, you may not want to answer this, but why is Justice taking an adversarial role in your case? I don't understand the role of Justice in your case, the Justice Department, I am talking about.

Mr. Burns. Yes, sir.

Chairman Gibbons. Could you comment on that without hurting yourself?

Mr. Burns. Yes, sir. It is difficult not to choose up sides, and I certainly don't intend to.

I don't know the motivation of the Justice Department. We have been attempting to find that out, as well as the motivation of the Commerce Department. It is not interpretation, it is motivation that should be explored.

Go back 8 years, and I am certain that the Justice Department thought that our position as a market leader would be strengthened if something were perhaps done to prohibit the Japanese. And they chose. And they chose strengthening the Japanese, rather than——

Chairman Gibbons. In other words, they attacked your position on an antitrust basis?

Mr. Burns. We believe so. They overlooked how we got there and the development that went into the product, and the new plants and continued improvement of our facilities.

Chairman **Gibbons**. Well, I think all of us get a little worried about the execution of the antitrust laws.

Mr. **Burns**. Yes, sir.

Chairman **Gibbons**. They can be vindictive and over-reactive, and Congress should take a good look at those laws, too. Unfortunately, we appear to be doing very little in that field right now. But we need to do more.

Mr. **Burns**. If I may help, Mr. Chairman, we are not at all about to, even obliquely, enter the area of the litigation. What is in litigation is not something that we are even asking to be considered or discussed or even alluded to.

The fact that there is litigation is the subject of our appearance. It was not the intent of the Congress that there be lengthy litigation.

The fact that X, Y, or Z is in litigation is——

Chairman **Gibbons**. In fact, in 1979, and prior to 1979, we had had many complaints about their countervailing duty laws and the dumping laws, and their execution by the Treasury. That is the reason why we moved the administration of those laws out of the Treasury Department and put them in Commerce.

We have had testimony from some witnesses that Commerce is doing a better job. I have a feeling that perhaps moving it from Treasury to Commerce may have prejudiced you because you got caught right in the middle of the movement and that is a terrible position to get caught in.

With the people who are handling a case, having to lay it down and other people having to pick it up, it sometimes gets manhandled in the shuffle. But that is no excuse for having had a case drag on as long as this.

We have also had complaints about the antidumping laws, that we have made them overly litigious. That we give so many rights of appeal that everybody feels like they have got to appeal everything, and these are interlocutory appeals on interlocutory decrees, rather than on final judgments. And that gums up the courts, gums up handling of the case.

I am not sure, because I don't know enough about the details of your case, whether that was a problem here. Did you find the courts to just be overburdened with work, and that was why they were slow getting to your matter? Or was something else wrong?

Mr. **Burns**. Well, I think Mr. Stewart, Mr. Eugene Stewart——

Chairman **Gibbons**. We welcome Mr. Stewart here.

Mr. **Burns**. Perhaps he can better speak to that than I.

Chairman **Gibbons**. Yes, sir.

Mr. **Stewart**. Thank you, Mr. Chairman.

The Court of International Trade is not overburdened. I know from my personal experience that the judges and personnel of the Court are affirmative about their enlarged jurisdiction, and have developed and are applying diligence and resources to expeditiously proceeding with their calendar.

The complaint that was made to you earlier today about tedious procedures was voiced by an attorney representing foreign interests, who are aggrieved when American industry has any day in court, when they receive negative determinations in the antidumping arena.

At the time of the original SCM case, there was no explicit right of judicial review from a negative decision of the International Trade Commission. That Government agency or tribunal that makes decisions, that have the power of life or death over a business enterprise, operates much more carefully when their determinations are subject to judicial review than when their decisions are the end of the chapter.

It took 5 years before the enactment of the Trade Agreements Act of 1979 and clarification of the jurisdiction and the right of appeal, for Smith-Corona, by going, first, to the District Court and the Court of Appeals for the District of Columbia and the U.S. Customs Court to establish, as a matter of law, that an American manufacturer, who was aggrieved by a negative decision by the International Trade Commission, had the right of appeal.

Now matters we believe, as the company's lawyers, so far as judicial review are concerned, are adequately circumstanced before a court with adequate resources. And there is not an overwhelming of the court by litigious procedures.

I believe the subcommittee need not be concerned about that. The problem, Mr. Chairman, to use your words a moment ago, you correctly observed that this committee and the Congress, intensely dissatisfied with the administration of the antidumping and countervailing duty laws by Treasury, required them to be placed in a new authority, or new agency.

But the policymakers in the Government who were responsible for the ineffective policies of the Treasury Department were in positions of power in the administration, and the Commerce Department simply adopted without change, the Treasury Department's improvident regulations, regulations that are oriented toward explaining away the fact of and margins of dumping.

Now the present administration is intent upon removing what vestiges from effectiveness there remain in those regulations. Mr. Chairman, it will shock you to know that on Monday of this week, before the International Trade Commission, Under Secretary of Commerce, Lionel Olmer, testifying before the Commission as to why the Department had initiated certain antidumping inquiries in the case of steel, stated, and I was present and heard it, that the Department of Commerce is reluctant to enforce the trade laws of the United States, because it is contrary to the free trade philosophy of the President.

In uttering those words, the Under Secretary demonstrated that he does not understand the significance of the antidumping and countervailing duty laws.

The liberal trade policy which you and your predecessors had a hand in enacting into law was based upon the concept of America's resources being allocated in accordance with the law of comparative advantage.

But only if genuine free enterprise competition between nations would determine where resources were invested, and not on the basis of unfair intervention in the market by dumping and by Government subsidization.

Therefore, your committee's policy, the policy of the Congress, of the encouragement of free trade, can only be carried out if the unfair trade laws are effectively and vigorously enforced.

This administration, this Commerce Department totally fails to understand that point. And that misunderstanding, that failure to understand was articulated by no less a person than the Under Secretary. It is Under Secretary Olmer that supervises the Assistant Secretary and Deputy Assistant, who sit in judgment on the dumping margins where there have been findings of dumping.

It is that group that reduced the dumping margins on portable electric typewriters from 48 to 4 percent in the case of the largest Japanese manufacturer. It is that group that is proposing to take the remaining strength, as it is, out of the Dumping Act.

Mr. Chairman, there was never a case where legislative oversight, meaning full persistent and professionally based is needed, and now by your committee, of the organization and administration of the Department of Commerce of the antidumping law.

Chairman GIBBONS. Well, you have made a very important statement there. We intend to follow through on it. I am in favor of open markets, but I think markets have to be fairly administered. We have established in principle that subsidies are unfair, and that dumping is unfair.

We ought to stick to those principles. I believe that we are best served when we stick very vigorously to the principles we believe in. And I, while I support open markets, I support fair competitive markets based on an understanding, and the fact that all the major industrial countries have subscribed to this.

We have all subscribed to the same set of codes and rules. And it becomes incumbent upon us to make sure that those things are carried out in a vigorous manner, a fair manner, and a proper manner.

So I assure you we will continue following up on this. We will ask Justice and Commerce to come here and respond to these charges. Of course, there will be a public session.

Mr. STEWART. They are developed at length, Mr. Chairman, in the technical paper that Mr. Burns referred to, which he has submitted in support of his testimony, and which he has asked be made a part of the record.

Chairman GIBBONS. Yes, sir; I was going to make sure that all of the matters that he has submitted become a part of the record.

He mentioned a chronological record of the case, and then I think there were some other things that I may have missed, but unless there is objection, I will instruct the clerk to make sure that all of them are in the record.

Mr. BURNS. Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Bailey.

Mr. BAILEY. Thank you, Mr. Chairman.

There is probably not too much that I can add to what has been said. I don't suppose you folks were here during some of my earlier comments and reflections on some of the testimony we have had here.

The policies of the Japanese, they really can't be too pragmatic as politicians, because they have no idea of the kind of ill will they are building worldwide, but we are reasonable people, and we will probably forget tomorrow some of the damage that we have suffered as a result of Japanese policies, deliberate policies, very unfair ones.

And it is ironic that the very individuals who are constantly talking about the administration or theorists who are always talking about free trade are really a little bit old-fashioned, because the world has grown up around their ears, and maybe the moss has covered their eyes, but you can no longer avoid the relationship between internal economic factors in different countries, policies, nationalistic policies and policies in our country.

They are blind to some of those things. They are blind to definitions of the word "subsidy". They are blind to definitions or applications of the word "monopoly". They are blind to the impact of antitrust legislation in one jurisdiction as opposed to another.

They also have taken, and are rarely admitting impediments, not to paraphrase Shakespeare, to the development of a really free international trade.

Let me, Mr. Burns, ask you this: Those impediments, of course, are the fact that they are going to create political forces within their own countries, jurisdictions here, constituencies that are going to make it increasingly difficult when we resolve these problems to tear these so-called nontariff barriers, or whatever, down.

They are going to make it increasingly difficult to adjust to them. Maybe I didn't hear you properly.

Were you the subject of or involved in antitrust action?

Mr. **Burns**. No, sir; not at all.

Mr. **Bailey**. You never have been?

Mr. **Burns**. That was an interpretation of the Justice Department.

Mr. **Bailey**. Let me get this clear. Had they ever charged you? Has an action ever been brought against you for antitrust?

Mr. **Burns**. No, sir.

Mr. **Bailey**. What do you mean that was an interpretation by Justice?

Mr. **Burns**. Assuming that our strength would be so much stronger.

Mr. **Bailey**. Wait a minute. They assumed that in the future, because apparently—let me get at this for one second—apparently because of the practices of American competitors, contemporaries at that time of yours.

Mr. **Burns**. No, sir; not at all.

Mr. **Stewart**. Let me explain it, if I may, Congressman Bailey.

Mr. **Bailey**. Yes.

Mr. **Stewart**. I was counsel for the company before the proceeding in which this event occurred. Mr. Burns was referring to the hearing before the International Trade Commission in the first antidumping investigation, in which the Commission was called upon to determine when Smith-Corona was being injured by reason of the dumping.

Mr. **Bailey**. Yes.

Mr. **Stewart**. The Justice Department entered the case to urge that the Commission make a negative finding of no injury, because the Justice Department said Smith-Corona was a monopoly in that it was the only manufacturer, and our laws ought not to be administered so as to give any benefit to a company in that position.

Mr. **Bailey**. Wait a minute. You are an attorney?

Mr. **Stewart**. Yes, I am, sir.

Mr. **Bailey**. Then you are learned in these matters. I wasn't aware that America's antitrust laws extended to the location or marketing practices of international manufacturing entities or companies. Do they?

Mr. **Stewart**. In the particular context we are speaking of they do not.

Mr. **Bailey**. They don't?

Mr. **Stewart**. The International Trade Commission ignored the recommendations of the Justice Department.

Mr. **Bailey**. What you are telling me is Justice was saying that it was taking a very liberal view of the word "market", taking a very international view, and taking a concept from American law, from internal American domestic law saying that it should be injected in this international.

Would that happen in Japan?

Mr. **Stewart**. No, it would not happen in Japan. It would not happen in Europe.

Mr. **Bailey**. It wouldn't happen in Europe?

Mr. **Stewart**. The Justice Department, which is the special custodian of our laws, had the temerity to say to the International Trade Commission you do not enforce the law because in our judgment it would further competition for this lone remaining American manufacturer to be denied relief.

Mr. **Bailey**. You realize the direction of my attempted sarcasm, I hope. It is outrageous. Would you do this for me? Could you substantiate—I shouldn't say substantiate, but can you give me a little more detail, a more detailed memo on some of this, on the stages of this litigation, this case history problem that you have had? Would you do that?

Mr. **Stewart**. Yes, sir; Congressman Bailey. May I invite your attention to the fact that there has been distributed to the committee——

Mr. **Bailey**. Yes, I saw that.

Mr. **Stewart**. A detailed statement, in which we have laid out the chronology, but I will supplement it.

Mr. **Bailey**. I need more than that. I would really like to get some information on Justice. What portion of the Justice Department was involved in that? Who made that presentation? What subdepartment is that?

Mr. **Stewart**. It was within the Civil Division. There is a Foreign Trade Branch, and it is the busy business of that branch to involve itself in any cases before governmental bodies administering our international trade laws.

Mr. **Bailey**. Let me ask you this: Do you know who the lawyers were? What was their specialty? Were there people there from the Antitrust Division? They have an Antitrust Division.

Mr. **Stewart**. These were from the Antitrust Division.

Mr. **Bailey**. From the Antitrust Division of the Department of Justice, they were before the ITC?

Mr. **Stewart**. That is correct.

Mr. **Bailey**. In conjunction with the individuals who represent the Foreign Trade Department or whatever it is in Justice?

Mr. **Stewart**. That is correct. It is a branch within the Civil Division, within the Antitrust Division.

Mr. **Bailey**. This wasn't just some law student representing the Trade Branch. There was some decision made in Justice. There was obviously collusion between the departments. There was some policy decision made.

Mr. **Stewart**. They were members of the bar. They were mature individuals, and they were carrying out a policy of the Antitrust Division to intervene in antidumping proceedings to urge that the law not be enforced in favor of industries that they judged to be strong enough to survive without such help where they felt it would promote competition for such aid not to be granted.

Mr. **Bailey**. Mr. Burns, does Smith-Corona sell overseas? Do you export typewriters?

Mr. **Burns**. Yes, we are a multinational company. We have plants in Canada, plants in Glasgow. We have plants in Singapore as well as the plants here in the United States, and we sell in practically every nation.

Mr. **Bailey**. What have Japanese trade practices been in those countries? Are you prepared to answer that question? First of all, what is the wrong market like? What percentage does the United States represent of the world market currently?

Mr. **Burns**. The United States is just about half of the world's market.

Mr. **Bailey**. Half of the world's market?

Mr. **Burns**. Yes, sir. What you are seeing in the Japanese thrust, with the elimination of Smith-Corona, which is their aim, you are seeing the beginning of a Japanese monopoly, not a monopoly only in the United States.

Mr. **Bailey**. There is no doubt in my mind, but let me ask you how do they market in Singapore and how do they compete with you there?

Mr. **Burns**. I am sorry, sir.

Mr. **Bailey**. How do they compete with you overseas? You manufacture typewriters in Singapore. You sell them in Southeast Asia or wherever. Do you know? You may not know, I don't, what are their trade practices there?

Mr. **Burns**. Pretty similar with what they do in the United States.

Mr. **Bailey**. Smith-Corona as an international multinational corporation, who are their competition?

Mr. **Burns**. Who are the Japanese competitors?

Mr. **Bailey**. No, who will compete with the Japanese if Smith-Corona dies tomorrow all over the world?

Mr. **Burns**. No one.

Mr. **Bailey**. No one?

Mr. **Burns**. They are making them for practically everybody now. What is lined up now is Smith-Corona versus Japan, and when we go it is Japan.

Mr. **Bailey**. That is interesting, isn't it? I would like to get more details if I could from you folks on what you have gone through in these series of lawsuits, the kind of arguments that are made. I would suggest to you, by the way, that what is happening to you, apparently some of your decisionmakers along the line just didn't give into some of the jawboning on how to handle the cases or when to bring them.

I would suspect that is the case. I don't want to be presumptuous. Correct me if I am wrong about that. I really think that what happens here is that some of our foreign policy people just don't like the idea of creating a private sector, interest in private sector litigants, and they don't like the interference in trade policy matters, the development of trade law.

Did you ever happen to fight with Commerce on this? Did they ever tell you to sit back and forget it? Have they ever tried to jawbone you?

Mr. BURNS. I don't know. Really, I can't answer that question. I think that we have proven our case. We have successfully pursued the case.

Mr. BAILEY. Did they ever discourage you in trying to pursue your rights?

Mr. BURNS. Not me personally.

Mr. BAILEY. What have they said to you?

Mr. BURNS. I think it is rather what they have not done that has been indicative.

Mr. BAILEY. I have talked to businessmen who have been discouraged. They have in some industries been discouraged.

Mr. STEWART. There has been none of that in Smith-Corona's case because the company, through counsel, has resolutely simply prepared petitions, filed them and invoked the jurisdiction, and sought the support of the courts.

Mr. BAILEY. Have they ever asked you to withdraw a case?

Mr. STEWART. No.

Mr. BAILEY. They have never asked you to withdraw a case? I have got to ask the same question that the chairman did. Why the hostility? I know you gave an explanation, a very emotional one, and it was very articulate and it was very well put, but is there some special reason? Do they treat other people the same way?

Mr. STEWART. That is a very long story, Congressman Bailey, and I would suggest if it is agreeable to you, in other words, not to take the time of the committee here, we will submit to you extensively in writing an exact answer to your question.

The short of it is that it has been the affirmative policy of each administration of the U.S. Government charged with the Antidumping Act to diminish the effectiveness of the act in accordance with commitments that have been made to other countries.

There are a series of agreements that have been made with Japan. The negotiations under the Tokyo round that led to the international antidumping code really involved a kind of an accommodation by the United States to the desire of other countries that the effectiveness of the Antidumping Act be reduced.

The people who negotiated that agreement are the people who were put in charge by the new authority of administering the new act. It is they who adopted the Department weakening regulations, and before leaving office recommended a further weakening of those regulations.

Their role in that regard was a continuity of long continued policymaking by administrations charged with administering the act.

It is an aspect of the foreign policy of the United States to accommodate the interests of other countries in having our Antidumping Act made ineffective, because it is now the only vestige of interference with their total access at times and prices of their own choosing to this market.

Mr. Bailey. I think the only thing to do is go to the American public with it, and woe be to Japan if the sleeping giant starts to realize some of the things that are going on. There is going to be a lot of public reaction to it. It is the only way to teach them a lesson.

I thank you very much. I hope you get more details to me. I would like more details on the experience you have had with these cases.

Mr. Stewart. Yes, sir; we will submit them, Mr. Congressman.

Mr. Bailey. Thank you, Mr. Chairman.

Chairman Gibbons. Mr. Vander Jagt?

Mr. Vander Jagt. Thank you, Mr. Chairman.

I would like to thank Mr. Burns for I think a very powerful testimony, a very dramatic case.

I am sorry I was not here to hear your statement. I have had the opportunity to read it and to review it and it is very well done.

Mr. Burns. Thank you, sir.

Mr. Vander Jagt. I note that you are in very capable hands, having been introduced by Congressman Wortley, one of the outstanding new Members of Congress, in the background, accompanied by the former great chairman of the Ways and Means Committee, Wilbur Mills.

I think that your testimony has been very valuable and helpful to the committee. I am glad that you made the effort to bring it to us.

Mr. Burns. Thank you very much, sir.

Chairman Gibbons. Before you leave, let me say to the committee staff that it is the Chair's intention when we finish here with the private sector that we give the administration a chance to comment upon observations made by the private sector. I wish you would please convey my particular interest in this case to them, so that they will be fully prepared to comment on it when they come back.

We intend to have them back in January or February.

As I say, this case has dragged on over enough years that we don't need to be partisan about where the blame belongs. There is enough blame around for everybody to share, and I want to get to the bottom of it. I want to make sure that things like this don't happen again. We will follow through.

Thank you so much.

Mr. Burns. Thank you, Mr. Chairman and members of the committee.

Chairman Gibbons. We will next take up a panel talking about dispute settlement under section 301, of the Trade Act of 1974. Most of us here in Congress know the members of the panel composed of Mr. Richard Rivers, Mr. Julian B. Heron, and Mr. Mark Sandstrom.

STATEMENT OF RICHARD R. RIVERS, PARTNER, LAW FIRM OF AKIN, GUMP, STRAUSS, HAUER & FELD, WASHINGTON, D.C.

Mr. RIVERS. Thank you, Mr. Chairman. I have a statement I would like to submit for the record.

Chairman GIBBONS. Richard Rivers.

Mr. RIVERS. Yes, sir.

Chairman GIBBONS. We used to know you when you ran the Senate over there.

Mr. RIVERS. I do have a statement which I would like to submit for the record which I will summarize.

Chairman GIBBONS. All statements will be put in the record in their entirety.

Mr. RIVERS. It is a privilege to be here today and to have this opportunity to testify before this subcommittee on section 301 and its relationship to international trade problems, in particular with respect to the services sector.

This is a topic of particular interest to me, for I have worked with section 301 for nearly 10 years and from three vantage points. First, as you were kind enough to recall, I was professional staff member with my copanelist here, then colleague, Mark Sandstrom, on the Senate Finance Committee.

Later I served as General Counsel in the Office of the Special Trade Representative during the Tokyo round, and finally for the past 3 years I have been a private practitioner advising clients, and, indeed involved in section 301 proceedings.

From my experience with section 301 I can tell you that it is an evolving and useful negotiating tool which can be particularly useful for the services sector, where unfair trade practices are not really susceptible to resolution under the more traditional remedies.

However, I have also come to recognize that section 301 is a tool which can be blunted and made worthless if handled in a timid or indiscriminate fashion.

The services sector has been one of the fastest growing and most productive in the U.S. economy. It now generates well over half of our country's GNP and employs some 54 million Americans. It is not surprising then that trade problems in the services sector are increasingly coming to the forefront.

The services sector being generally export-oriented is increasingly encountering trade problems abroad. Only section 301, because of its broad scope and retaliatory authority, is presently a viable tool for dealing with these kinds of problems. Indeed, although the majority of section 301 cases on the record have involved U.S. agriculture—another sector of our economy which is export-oriented—the services sector has run a close second.

The continued utility of section 301 to the services industry in my judgment will depend upon how skillfully it is administered in the future. Excessive caution or timidity in willingness to assert section 301 will result in the provision losing credibility.

As a Government official, I can tell you that I participated in a number of section 301 cases in which a satisfactory resolution was reached only after the foreign government involved was informed that a notice soliciting public comment on retaliation proposals had been sent to the Federal Register for publication. It was only at that time in several cases that a settlement could be reached.

Similarly in the *Korean Insurance* case which I handled in behalf of my client, the American Home Assurance Co., it was only after the U.S. Government signalled the Korea Government that it took the issue seriously that we were able to reach a compromise settlement, in which the Republic of Korea agreed to liberalize its restrictive domestic licensing policies on insurance, allowing my client to enter and compete more fully in the Korean insurance market.

I might add that the agreement that was reached has been entirely honored by the Korean Government.

On the other hand, section 301, in my experience if it is administered too timidly, can become weakened to the point of uselessness.

What I am saying is that if section 301 is not administered in a forceful, assertive manner, but also a responsible manner, the provision will lose its value as a persuasive trade remedy for dealing with these kinds of problems.

If the U.S. Government does not present a united front, if the interagency process—as it is euphemistically referred to in Government—doesn't produce a common will and a united front, I can assure you the result of a section 301 petition can be a disaster, not only for a private petitioner but in my judgment for the commercial policy of the United States.

In addition to pursuing trade problems and services vigorously and forcefully through section 301, I think we need to create ways of encouraging nations to commit themselves to free and open trade in the services sector.

I think it is important for the U.S. economy. I think it is important for the world economy. This has been a long-neglected sector and it is high time we began to remove the barriers which impede trade in services.

One last comment in my remarks, Mr. Chairman. section 301, to the best of my knowledge, has no analog in foreign law. I have been told this over and over again by my friends and counterparts in foreign governments. They have no such provision. Indeed, a few of them are shocked that we have such provision.

The idea of formalizing a procedure whereby a private citizen with a grievance can petition his government and seek its assistance in resolving a problem that government has created and only governments can resolve through negotiation and agreement is utterly foreign to most of our trading partners.

I might add that it is also uniquely American, and accordingly, I think it is something we ought to preserve and protect, and be certain it is not abused. So I hope this has been helpful to you, and I conclude my remarks and I will be available for questions at the appropriate time.

Thank you.

[The prepared statement follows:]

STATEMENT OF RICHARD R. RIVERS, PARTNER, LAW FIRM OF AKIN, GUMP, STRAUSS, HAUER & FELD

Mr. Chairman, I am Richard R. Rivers, an attorney with the Law Firm of Akin, Gump, Strauss, Hauer & Feld. It is a privilege to have been invited to testify before this subcommittee on section 301 of the Trade Act of 1974 and its relation to international trade problems in the services sector. This is a topic of particular interest to me, for I have worked with section 301 for nearly 10 years and from three vantage points: First, as a professional staff member of the Senate Finance Committee from 1973 to 1977, during which time I assisted that committee in drafting and developing the section 301 unfair trade provision; second, as General Counsel of the Office of the U.S. Trade Representative from 1977 to 1979, where I had general responsibility both for section 301 cases (including the Soviet marine insurance and Canadian border broadcast cases) and for fashioning the dispute settlement provisions of the codes negotiated in the Tokyo round of multilateral trade negotiations and the amendments to section 301 contained in the Trade Agreements Act of 1979; and finally, as a private practitioner these past 3 years, during which time I have represented and advised clients in section 301 proceedings, including the recent section 301 Korean insurance case.

From this decade-long perspective, I have come to see section 301 as an envolving negotiating tool which can be highly useful, particularly in a sector such as services where unfair trade practices are not susceptible to resolution under traditional remedies. However, I have also come to recognize section 301 as a tool which can be blunted and made worthless if handled in a weak or indiscriminate fashion. It would be regrettable indeed if this were to occur—particularly in the services sector, an area so vital to our economy and so vulnerable to protectionist manipulation.

The services sector has been the fastest-growing and most productive in the U.S., now generating well over half of our country's gross national product and employing some 54 million Americans. Foreign revenues of the U.S. service sector have been estimated at $60 billion for 1980, with a favorable trade balance that has helped offset serious U.S. merchandise trade deficits. Worldwide the U.S. accounts for about 20 percent of international trade in services. It is not surprising, then, that trade problems in the services sector, arising in part from foreign aspirations to protect and foster lucrative services industries, are coming increasingly to the forefront

In looking for avenues through which to pursue their legitimate trade grievances, however, American services industries have encountered difficulties. Traditional U.S. trade statutes such as the countervailing, antidumping and escape clause laws are designed to afford relief for import-injured industries, whereas the U.S. services sector, being generally export-oriented, finds its problems in trade barriers abroad. The GATT (General Agreement on Tariffs and Trade) international trade rules have long been construed to cover only trade in products, not trade in services, making its provisions for international complaint, consultation and dispute settlement largely unavailable to the services sector. Finally, foreign nations, in their zeal to foster "infant" services industries, are proving very imaginative in designing hidden barriers to services trade. My experience in the information and data exchange area has been particularly enlightening recently, where issues such as how to value for tariff purposes a tape or DISC carrying computer software are becoming crucial to free world flow of information and data.

Only section 301, because of its broad scope and retaliatory authority, is presently a viable tool for solving the export-oriented problems of the U.S. services sector. Section 301, as you are aware, authorizes the President to take all appropriate action, including retaliation, to obtain removal of any act, policy, or practice of a foreign government which violates an international trade agreement or is found to be unjustifiable, unreasonable, or discriminatory, or burdens or restricts U.S. commerce. This U.S. Trade Representative's Office administers the provision, and since its inception in January 1975, the majority of section 301 cases have concerned foreign trade problems encountered by U.S. agriculture, another highly successful, export-oriented industry. The services sector has run a solid second to agriculture, however. Of the over two dozen section 301 cases which have been filed with USTR since January 1975, 5 or about 20 percent have concerned service problems in the shipping, insurance, and broadcasting industries. In addition, in the Trade Agreements Act of 1979, the Congress specifically recognized the importance of section 301 to the services industry by amending the provision to make it clear that the definition of "commerce" includes services. In short, section 301 has been increasingly utilized by petitioners with legitimate trade grievances in the services sector because they would otherwise have had no place to go.

The continued utility of section 301 to the services industry will depend, however, on its forceful and vigilant administration. Excessive caution in willingness to assert section 301 will result in the provision losing its credibility. As a government official, I participated in more than one case in which a satisfactory resolution was reached only after the foreign government involved was informed that a notice soliciting public comment on retaliation proposals had been sent to the Federal Register for publication. I doubt whether mere aide memoires from the U.S. State

Department would have achieved settlements in such cases—the only alternative traditionally available to petitioners aside from section 301.

Similarly, in the Korean insurance case, it was only after the U.S. Government signalled the Korean Government that it took the issue seriously that we were able to reach a compromise settlement in which the Republic of Korea agreed to liberalize its restrictive domestic licensing policies on insurance, allowing the American Home Insurance Co. to enter and compete more fully in that market, an agreement which the Korean Government has honored. These are examples of the kind of real action, resulting in dollars in the pockets of U.S. industries competitive abroad, which section 301, imaginatively and effectively administered, can achieve.

On the other hand, section 301, if administered too cautiously or too timidly can become weakened to the point of uselessness. For example, I question whether the U.S. broadcasters who brought the section 301 case against Canadian tax measures which were depriving them of advertising revenues are fully satisfied with the remedy they achieved. The retaliatory "mirror" tax legislation which the President proposed in 1980 has not been enacted into law. Perhaps immediate action of a less intellectually appealing but more hardhitting nature would have been preferable. What I am saying is that if section 301 is not administered forcefully, but also responsibly, the provision will lose its value as a persuasive trade remedy. If the U.S. Government does present a united front, if the interagency process—as it is euphemistically called—does not produce a common will, the result can be disastrous.

In addition, section 301 will quickly lose credibility if it is used indiscriminately, if ill-conceived petitions are accepted. We of the trade bar must play a role in ascertaining that section 301 is, indeed, the proper and advisable path for a client to pursue. The U.S. Trade Representative's Office must likewise reject improper petitions and define carefully its section 301 jursidiction. If a petitioner should properly be before another agency under a more traditional trade statute, then USTR should say so, rather than expend its excellent but limited staff resources on cases which rightully belong elsewhere. To do otherwise would dilute the ability of USTR to concentrate on worthwhile cases concerning issues for which section 301 is the only possible remedy. Similarly, USTR should carefully distinguish between pure investment disputes and disputes where investment is merely ancillary to international trade in services. In sum, part of section 301's unique effectiveness is its limited, forceful application to trade problems which are difficult but not altogether intractable.

In addition to pursuing trade problems in services vigilantly and forcefully through section 301, I believe we should also seek creative new ways of encouraging the trading nations of the world to commit themselves to free and open trade in the services sector. There has been much talk of an international services negotiation and, indeed, legislation relating to trade in services is about to be introduced into Congress. As a member of the private bar dealing with clients whose business activities are increasingly frustrated by foreign protectionism in this sector, I support and encourage legislation of this type and urge that it be given full and considerate hearing. I would be glad to be useful in this effort in whatever way I may.

One last comment, Mr. Chairman. Section 301, to the best of my knowledge, has no analog in foreign law. The idea of formalizing a procedure whereby a private citizen with a grievance can petition his government and seek its assistance in resolving a problem that government has created and only governments can resolve is utterly foreign to the governments of our trading partners. It is also uniquely American. Accordingly, we should preserve and perfect it, and make certain it is not abused.

I hope my testimony has been helpful to you today and would be pleased to answer any questions you may have.

Chairman GIBBONS. Thank you, Mr. Rivers.

Mr. Heron.

STATEMENT OF JULIAN B. HERON, JR., PARTNER, HERON, HAGGART, FORD, BURCHETTE & RUCKERT, AND COUNSEL FOR CALIFORNIA-ARIZONA CITRUS LEAGUE; THE CALIFORNIA CLING PEACH ADVISORY BOARD; SUN DIAMOND GROWERS, INC.; THE MILLER'S NATIONAL FEDERATION; AND THE NATIONAL SOYBEAN PROCESSORS ASSOCIATION, ACCOMPANIED BY FRANK LIGHT, PRESIDENT, SUN DIAMOND GROWERS, AND WAYNE E. SWEGLE, PRESIDENT, MILLER'S NATIONAL FEDERATION

Mr. HERON. Thank you, Mr. Chairman. It is very much appreciated being invited to testify on behalf of the Miller's National Federation, Sun Diamond Growers of California, the National Soybean Processors Association, California-Arizona Citrus League and the Cling Peach Advisory Board.

With me today are Mr. Frank Light, the president of Sun Diamond Growers, who flew here directly from Tokyo in order to be able to be here if the committee had any questions, and Mr. Wayne Swegle, president of the Miller's National Federation.

We all wish to thank you and your committee for the oversight hearings that are being held. Foreign trade is especially important to agriculture and the associations appearing before the committee today. We all join in encouraging your committee and the Congress to continue its close attention to international trade.

Our purpose today is to respond to the request to discuss with this committee the dispute settlement process, particularly as set forth in section 301 of the Trade Act. This section is particularly important to agriculture because of the need to resolve trade disputes promptly. This is especially true in the case of perishables and annual crops. It is believed that the agricultural groups before your committee today represent the most experienced group of agricultural petitioners involved in the 301 process.

The statements submitted to this committee by each panel member details the experience of that particular industry, and we would ask, Mr. Chairman, that each statement be made a part of the record.

Chairman GIBBONS. Yes, sir, at the end of your statement they will be.

Mr. HERON. Thank you very much, Mr. Chairman.

It would be worth while to discuss with the committee the experience common to each of the cases, which will point up the strength and weaknesses of the 301 process and suggest change where necessary. The three principal areas of commonality between all the cases might be summarized as the legalistic approach, the method and timing of prosecuting the case, and the alleged damage requirements, be discussed in that order.

There is a tendency on the part of the United States and the Office of the Special Trade Representative and other executive branch agencies to take a legalistic approach in section 301 cases in the first instance. It must be recognized that international disputes settlement is a political process, not a legal process. This is especially true of GATT proceedings.

If our country puts too much emphasis on legal processes, we will isolate ourselves from what is happening with the rest of the world, and we just have to keep our sight on the fact that cases are ultimately resolved through political settlements.

Promulgation of detailed regulations for the initial filings of cases tend to discourage the 301 process. It also calls into question the purpose of the hearing provided for in section 301. Unfortunately, 19 U.S.C. 2413 requires the United States to request consultations with the concerned foreign governments regarding the issues raised in the 301 petition on the day the petition is accepted.

This gives rise to the inclination to erect increased legal requirements for filing 301 cases. It is suggested that this committee may wish to consider an amendment so as to require notification at some point after the 301 hearing. This would allow the affected industry the opportunity to place its complete case in the record, and before the section 301 committee, so that a meaningful evaluation of each case may be made.

This procedure would give each domestic industry a fair and reasonable chance to present their case and eliminate the possibility that the case would be governed by the petitioner's drafting ability.

Congress may wish to express the view that most if not all cases should proceed through the hearing stage. Government is not always the best judge of export opportunities. A brief example might serve.

The almond industry a few years ago sought to gain access to the Indian market for almonds. Almost uniformly with the exception of the Department of Agriculture, that was met with laughter. The U.S. Government determined that it was impossible to sell almonds in India, and therefore there was no need to try to remove the Indian barriers to almonds.

Nevertheless, the Indian barriers to almonds were reduced, not removed but reduced, and sales of almonds took off, and within 18 months were up to a $5 million level, so it is important to keep in mind that probably the private sector is the best judge of where markets exist, and great weight should be given to their views.

The second area involves the method and timing of prosecuting the case. The United States historically holds the view that the dispute settlement process is undiplomatic and unsettling to trade relations. The reverse is true. The GATT signatories have agreed upon a method of settling trade disputes. The system should be used regularly without any feeling of hostility.

It is extremely frustrating to private trade interests to see other governments take action adversely affecting U.S. trade, and then find that the U.S. Government is unwilling to move rapidly to resolve the matter. Lack of effective dispute settlement processes frustrates trade rather than enhances it.

A few examples might serve to illustrate here. There is currently pending in the 301 process a case on wheat flour which this committee is familiar with. It was filed in 1976, and only now is it moving forward under the subsidies code, hopefully to some resolution. The European subsidies adversely affecting wheat flour had been going on for a number of years before 1976 without the United States moving aggressively to terminate those subsidies.

Another case, and perhaps the most important of all of the 301 cases pending, is the current case involving exports of fresh and processed citrus from the United States to the EC. That case involves the most-favored-nation principle of GATT, and calls into question the United States resolve to preserve and expand upon that principle.

Mr. Chairman, your discussion earlier in these oversight hearings with Secretary Rashish is recalled, and the importance that was discussed at that time of continuing the most favored national policies for our trade. The citrus case will serve as an example for this committee to see, judge and evaluate whether or not the United States really intends to go forward. That case has been pending since 1969.

The United States only recently has decided to go forward in article 23(1) and the committee's support is very much appreciated.

Two other examples where 301 has worked through rapid prosecution of the cases involve soybeans. A few years ago the Europeans instituted a procedure involving nonfat dry milk. There was a coordinated approach. The United States moved forward rapidly in response to a section 301 complaint from the soybean industry, took the matter to GATT, received a successful resolution of the case.

That was coupled with parallel litigation inside the European community on the same point, and the Europeans dismantled their practice. Although it took a little bit longer, the United States also a few years ago on behalf of cling peaches in response to a 301 case went forward with the GATT panel that was successful and resulted in the elimination of the minimum import price on cling peaches, so the process can work if the prosecution of the cases is rapid and forceful.

The United States in these cases generally proceeds to dispute settlement through article 22 of GATT. That is a section that provides for consultations. Normally the United States in going to article 22 has no realistic belief that those consultations are going to result in any meaningful solution, and the question is raised as to whether or not the United States in certain instances should not proceed directly to article 23 to show their seriousness.

We have a good example of that from the pending 301 case involving peaches, pears and raisins, which was published in the Federal Register today.

The Australians, who were similarly affected, assisted their industry by notifying the Europeans of their unhappiness with the European domestic subsidy system, and took the matter directly to article 23(1) of GATT. The United States, responding initially to the domestic industry, asked to participate in those article 23(1) hearings. The Europeans under GATT procedure had the right to deny the United States the right to participate, although this is a position that is normally not taken. The Europeans exercised this right and told the United States they did not wish to talk with them in the Australian matter.

Now the United States at that point could have asked for its own article 23(1) consultations and pursued the matter since it was prepared to go forward with the Australians. It did not. Instead the domestic industry has spent its time preparing a 301 case that was published in the Federal Register today. A hearing is scheduled for January 6 as required under statute, but there is really no reason why the United States could not be proceeding on its own in GATT to help the domestic industry.

In this case, the damage is particularly severe. With respect to raisins, the European market, particularly Germany, is a rapidly growing market for U.S. raisin exports. As a result of the European system, instituted this past August, raisin sales to the European Economic Community have stopped. There are still a few deliveries in progress under old contracts, but there are no new sales, and there is really no reason for the United States to wait in responding to this action.

You must remember in the 301 case that the domestic industry and the United States are on the same side, that being to assist U.S. exports. It is also necessary to remember that while trade policy and dispute settlement is developed and implemented by governments, it is the private sector which conducts the trade.

When the U.S. exports are interrupted or threatened, our Government must move promptly to assist. Private industry has to work closely with the Government, but the Government also has to work closely with the private sector. If we in the United States are going to retain our open markets, as agriculture certainly urges, then it is necessary that the United States respond quickly to agriculture.

Congress has assisted in fostering the cooperation between the private sector and the Government through the establishment of advisory committees. The Agricluture Advisory Committee was discussed earlier in these oversight hearings, and it is understood now that it will meet shortly after the new year, and the agricultural community thanks this committee for urging that process to move forward and continue.

The third point relates to damages. The question is whether or not it is necessary to establish damage to prevail in a section 301 case or in GATT for that matter. Great care must be exercised in this area, not to be trapped by foreign governments into the argument that it is necessary to establish damage. A violation of GATT should be sufficient in and of itself to provide relief, if we expect GATT rules to be respected.

If the United States or our trading partners do not intend for GATT rules to be respected and honored, then the Congress should be informed so that it can establish its own rules for the United States.

If it is necessary to prove damage as a criteria for prevailing in export-oriented cases, then we must all recognize that GATT is nothing more than a probate court administering the estates of dead industries.

In the case of agriculture, the threat of injury is of extreme importance, because of the nature of the products involved and the time elements involved. If the United States is not prepared to defend its export interests promptly, swiftly, and effectively, then none of the rules have any meaning. In these instances damage is rarely established by historical statistics.

The raisin action in this case is a good example.

Mr. Chairman, all the panelists hope and urge that your committee will give these comments careful consideration. The comments are based upon actual experience with section 301 and with GATT.

It is believed that your committee can significantly assist U.S. trade policy in dispute settlement development by continuing your active role. We urge you to do that, and appreciate very much your time and attention, and would be pleased to respond to any questions the committee may have.

[The prepared statements of Julian B. Heron, Jr., Frank R. Light, W. R. Hoard, Sheldon J. Hauck, and Wayne E. Swegle follow:]

STATEMENT OF JULIAN B. HERON, JR., ON BEHALF OF THE CALIFORNIA-ARIZONA CITRUS LEAGUE

The California-Arizona Citrus League (the League) is a voluntary nonprofit trade association composed of marketers of California and Arizona citrus fruits. Members are farmer cooperatives and independent shippers which represent over 75 percent of the 10,500 citrus fruit growers in Arizona and California. These growers produce oranges, lemons, grapefruit, tangerines and limes. This fruit is marketed in both fresh and processed forms.

The League speaks on behalf of the California-Arizona citrus fruit industry on matters of general concern such as legislative, foreign trade and other similar topics. Representatives of the League have devoted much time, effort and expense in the promotion and export of California-Arizona citrus fruit and have concerned themselves with international trade problems since early in the 1920's.

The League appreciates the opportunity to appear before the Subcommittee on Trade to share its views with regard to Section 301 of the Trade Act (19 U.S.C. 2411), the dispute settlement process of the General Agreement on Tariffs and Trade (GATT) and this industry's experience with both. It is believed these items are important and ones which Congress needs to participate in closely. For these reasons, the League is appreciative of this Committee's oversight hearings.

First, the League would like to thank the members of this Committee for the attention that has been given to problems involving citrus exports. The League would also like to thank the Committee for holding these important oversight hearings. It is believed that trade policy is of the nature that requires close Congressional involvement. The League also would like to thank Ambassador Brock for his testimony on October 29, 1981 to this Committee where he specifically pointed out on page eight of that testimony the intent to resolve the Japanese quotas on citrus and beef.

As this Committee knows, the California-Arizona Citrus League filed the first complaint ever filed under Section 252, which was the predecessor of Section 301. That complaint involved the damaging discriminatory tariff preferences granted by the European Economic Community to certain Mediterranean countries. Those preferences reamin in effect and are the subject of a current Section 301 case brought by the California-Arizona Citrus League, Texas Citrus Mutual, Texas Citrus Exchange and Florida citrus producers and processors. This is the oldest outstanding trade dispute subject to a Section 301 complaint.

The League urges this Committee to follow this case closely because it serves as a good example to measure the effectiveness of our trade laws and trade negotiators. The importance of the case far exceeds the commodity involved—citrus. The EEC chose to violate Article I of GATT when it extended its discriminatory tariff preferences to Mediterranean countries in 1969. Prior to that, the EEC, which had used preferences on citrus, had always extended the benefits of those preferences on a most favored nation basis. Since 1969, the EEC has refused to extend the benefits on a most favored nation basis, expanded the number of countries receiving preferences and increased the membership in the EEC. The discrimination has damaged numerous exporting countries, including the United States.

Another reason for this Committee to watch this case closely is the fact that the manner in which it is treated by the United States will disclose the resolve on the part of this Administration to correct trade problems. No one in this or any other Administration has ever disputed that the EEC's action violates Article I of GATT. Article I, as this Committee knows, is the most favored nation provision. The United States trade policy has been based on most favored nation treatment for over 40 years. It is important that the United States insist the EEC return to nondiscriminatory rules of trade.

This case also serves to illustrate the method of handling trade disputes by the Administration. As stated previously, there is no dispute that the EEC has violated Article I of GATT. A violation of GATT should be sufficient to allow an offended country to pursue the matter. The European Economic Community often argues that it is necessary to establish damage. This is an argument that we in the United States must be careful not to accept. If the United States were to accept the argument that it is necessary to establish damage to prevail in GATT, then GATT would be nothing more than a place to administer the estates of deceased traders. It often takes years before damage can be established statistically. In some instances, it is not possible to establish damage statistically. Damage is clearly not the measure of whether a complaining party should prevail in GATT. United States trade policy has always maintained that it is not necessary to establish damage in order to prevail in GATT.

This Committee should question closely Administration representatives as to whether or not they assert damage as a necessity to going forward in GATT. If the Administration were to do this, it would be more restrictive to U.S. trade disputes than reflective of the intention of GATT.

The present citrus case also will serve this Committee well for determining the administration of our trade laws. The United States has always favored a multilateral solution to trade disputes as is reflected by the establishment of GATT. However, from time to time, there are rumors that the United States has entered into various secret bilateral agreements affecting GATT rights. From time to time, it is possible to hear such a rumor with respect to the pending citrus case. Research by the California-Arizona Citrus League finds no agreement reported to Congress and none ratified by the Senate. Therefore, it seems reasonable to assume that the United States has not entered into any secret agreement. This is a matter with which this Committee may wish to concern itself closely and investigate fully.

If GATT is to work, then the United States must assume the leadership to see that it does. It must take cases forward through the dispute settlement process. Not all cases will be won, but most should be if they are based upon a violation of GATT rules. Then, the Congress will have an accurate basis to measure whether or not our trading partners are interested in workable international trade rules. If our trading partners are not, then the United States will be able to respond accordingly.

Almost ten years ago the Honorable Peter G. Peterson, in his report to the President, discussed the need to preserve nondiscrimination in foreign trade. In his report to the President, he stated at page 20: "The United States has long supported the multilateral, nondiscriminatory approach to the management of international economic relations, as opposed to bilateralism and discrimination. The United States has global economic interests: it thrives best in a world of nondiscrimination. The American interest is not solely economic, however. Nationalism is politically divisive, whether practiced militarily or economically. The United States has tried to encourage the development of an international system which would contain divisive economic nationalism and exclusive regionalism, so that political as well as economic relations might operate to the general benefit of all countries."

This serves to illustrate the importance of the citrus case. This Committee will want to follow this case closely for another reason. Some argue that because the case is ten years old, patterns of trade have been established and nothing can be done. This accepts the European view that if the Europeans can stall a matter long enough, the United States will lose its resolve and give up. This Committee should not let such a situation exist.

The Trade Policy Committee has recently determined to take the citrus case forward to Section XXIII of GATT. Undoubtedly the United States will go forward based upon the violation of Article I of GATT. This is a matter which the League recommends this Committee follow closely. If the Administration were to go forward on any basis but a violation of Article I, it would be a clear signal to Congress that the Administration no longer considered the most favored nation principal to control U.S. trade policy. It would also be a clear signal that the Administration was going forward on less than its strongest argument, which would only be understandable if there were a secret agreement involved. If such were the case, then this Committee would undoubtedly wish to be fully aware of it and expose the matter on the public record. Again, research by the League discloses no such agreement having been reported to Congress and it assumes that none exists.

Section 301 of the Trade Act can be made to work if the United States pursues its trade interests agressively, effectively and timely. The interests of this Committee and Congress generally will play a major role in accomplishing this.

As this Committee watches in the coming weeks what the Administration does to assist citrus growers in Florida, Texas, Arizona and California obtain equal treatment from the EEC, it will be able to measure the determination of the United States to an effective trade policy. The Committee's attention and time is very much appreciated.

The California-Arizona Citrus League will be pleased to respond to any questions that this Committee may have.

Respectfully submitted.

William K. Quarles, Jr., *President.*

Statement of Frank R. Light, President, Sun Diamond Growers of California

This statement is submitted by Sun Diamond Growers of California in response to the Subcommittee's announcement of oversight hearings on U.S. trade policy. Our testimony will address the deleterious effects on American raisin producers of the raisin subsidies imposed by the European Economic Community.

Sun Diamond is a federated cooperative composed of Sun-Maid Growers of California, Sunsweet Growers, Inc. and Diamond Walnut Growers, Inc. It represents over 5,500 California farmers of raisins, prunes and walnuts.

THE EUROPEAN BARRIER

American raisin producers depend heavily on foreign trade which is free from artificial market restraints imposed by importing countries. Today, we are particularly concerned about restrictive subsidies established by members of the European Economic Community (EEC). American producers shipped 36 percent of total 1980 exports to the EEC, with an estimated value exceeding $41 million. The EEC's subsidies are intended to stimulate production of raisins by Greece, a new EEC entrant, at the expense of non-EEC suppliers such as the United States.

Sales of American raisins to the EEC are severely inhibited through recently-imposed programs that allow Greek raisins (sultanas) to be sold in EEC markets at prices substantially below their actual costs. The practices used to destroy American export markets include:

1. subsidies provided to processors that permit selling of Sultanas at prices less than those guaranteed and paid to the Greek farmer;
2. provision of "free" credit which is passed on to the trade;
3. special storage allowances;
4. special export incentive programs; and
5. protective import tariffs on American raisins, while Greece enjoys a preferential duty on exports to EEC countries.

Today, for example, the direct costs of American raisins delivered, duty paid, to Hamburg, Germany, is approximately 96 cents per pound. However, we face unfair competition from Greek raisins which may be purchased at a subsidized price of 43 cents per pound, or less. Even at this lower price, the EEC subsidy guarantees Greek farmers a better price than that received by their American counterparts.

We cannot compete against a commodity priced at a less than one-half our direct costs of production—ignoring our significant overhead costs which are not even included in the 96 cent per pound figure. Sales to the EEC are down by over 60 percent for the first four months of the 1981 crop year—the period since the EEC subsidy program was imposed. Sales to Germany are off by 71 percent for this same period; exports to France and the United Kingdom have been reduced by over 60 percent. And, these dire trend data do not tell the whole story. Remaining export sales involve obligations under old contracts; no new contracts are being executed for sales of American raisins to the EEC.

The EEC raisin subsidies also destroy export markets for other nonmember producer countries, such as Australia and South Africa. This serves to heighten competition in other markets such as Canada and Japan.

Thus, American producers face a true dilemma. We cannot cut our prices to compete with subsidized foreign competition and still hope to survive. Yet, American raising producers are unique in foreign markets because they are not protected by subsidy support programs and a host of other aids such as unreasonable tariff and nontariff trade barriers, government paid incentive programs, storage aid and free government credit. Our only hope is a firm commitment by the American government to pursue free trade policies and to take actions necessary to encourage foreign governments to abide by their international obligations.

THE AMERICAN PRODUCERS' RESPONSE TO THE IMPORT BARRIER

On October 23, 1981, Sun Diamond Growers of California joined with the California Raisin Advisory Board in petitioning the United States Trade Representative under Section 301 of the Trade Act of 1974, to take all action within his power to eliminate the EEC Greek raisin subsidy program. Also, joining in the petition were representatives of the American canned peach and pear industry, who have also been subjected to EEC discriminatory trade practices. We are advised that the U.S. Trade Representative has now agreed to accept our petition, in a notice yet to be published in the Federal Register.

It is essential to the domestic raisin industry that this case proceed quickly to negotiations with the EEC. We have already documented very significant losses in export markets and we anticipate further serious market erosion. No further demonstration of injury to domestic producers should be required before the U.S. Trade Representative undertakes efforts necessary to attain a full and effective remedy. We seek the support of this Subcommittee in assuring that the U.S. Trade Representative aggressively pursues a remedy on behalf of this important segment of American agriculture.

Respectfully submitted.

FRANK R. LIGHT, *President.*

STATEMENT OF W. R. HOARD, MANAGER, CLING PEACH ADVISORY BOARD

INTRODUCTION

This statement is submitted on behalf of the Cling Peach Advisory Board in response to the Subcommittee's announcement of oversight hearings on U.S. trade policy. Our testimony will address the strengths and weaknesses of the Section 301 process, in particular as it relates to the canned peach, canned pear, fruit cocktail, and raisin Section 301 case recently accepted by the Office of the United States Trade Representative (USTR).

The Cling Peach Advisory Board is organized pursuant to California statute and represents all peach producers and marketers in the state of California. Because the Board represents an industry that exports significant quantities of canned peaches and fruit cocktail, its interest in U.S. trade policy is strong.

California produces 100 percent of the nation's cling peach supply. Approximately 72 percent of the cling peach crop is packed as canned peaches, another 25 percent is used in canned fruit mixtures, and the remaining portion is packed as baby food, puree or concentrate. The farm value of the total cling peach production was approximately $130 million in 1980. The total finished product value of the peach and fruit cocktail pack is over $450 million.

Canned peaches and fruit mixtures make a major contribution to California's export trade. In the 1980 crop year, canned peaches and cocktail ranked as the ninth leading export from California, with an export value in excess of $90 million.

Prior to the formation of the EEC, the United States was the leading third country supplier of canned peaches and fruit cocktail to the EEC. Today, however, this country's share of the EEC's market is seriously threatened by excessive EEC subsidies. Section 301 has been invoked, as it has been in previous years when EEC practices have threatened U.S. cling peach exports, in an effort to remove this threat and to preserve the EEC as a significant export outlet. Our testimony will set forth both our prior experience with the applicable procedures as well as our current interest in Section 301 and the GATT.

Section 301: Challenge to minimum import prices

The Cling Peach Advisory Board's first Section 301 challenge against the EEC occurred in 1975, when it opposed the EEC's existing and proposed import restrictions on processed fruits and vegetables. In the fall of 1975, the United States informed the GATT Council that it had entered into Article XXIII:1 consultations with the EEC. Consultations held in March of 1977 failed to achieve a satisfactory resolution. It was not until the fall of 1977 that the United States referred this matter to the Contracting Parties and sought the formation of a panel pursuant to Article XXIII:2. The panel, after much delay, successfully resolved this matter in the fall of 1978.

The described chronology of events highlights both a strength and weakness in the Section 301 and GATT procedures. Although it demonstrates that such procedures can successfully resolve world trade disputes, it emphasizes too, the slowness with which panels are formed and issues are resolved. Because the domestic industry suffers growing damage while a trade dispute is outstanding, it is critical for U.S. officials to use the flexibility provided under Article XXIII to vigorously press complaints in the GATT toward a swift resolution.

Section 301: Current challenge to processor subsidies

The need for swift and immediate action by our U.S. government officials exists again today in the face of actions taken by the EEC in 1978, 1979, and 1981, when it introduced production subsidies on canned peaches, canned pears, and raisins, respectively. Although the stated aim of these subsidies is to make EEC products competitive with those of third countries, the established subsidies far exceed the levels needed for their intended purpose. The subsidization scheme allows EEC growers and producers to significantly undersell their U.S. counterpart, and provides undue stimulus to EEC production. This is particularly true now that Greece has become a member of the EEC. As a consequence of these excessive subsidies, it is our belief that U.S. trade in canned peaches and fruit cocktail to the EEC will decrease substantially, and, over a period of time, may be eliminated altogether. At the same time, the United States will face intensified competition in third country markets from other competing suppliers.

The United States has previously consulted with the EEC on its subsidy practices as they related to canned fruits, but without satisfactory resolution. In 1978, bilateral discussions were held between the United States and the EEC, during which the United States urged restraint in establishing production subsidies for canned peaches. Following those consultations, the Community imposed subsidies at levels higher than that initially proposed. Recently, the United States requested that further consultations be held with the EEC in conjunction with Australia'a request for Article XXIII consultations. That request was refused by the EEC.

Because of the need for immediate relief from the EEC's subsidy system, the Cling Peach Advisory Board joined with several other parties in October of this year to file a 301 petition, requesting that this matter be pursued under Article XXIII:1 of the GATT. Other petitioning parties included the California League of Food Processors, Sun Diamond Growers of California, the Northwest Horticultural Council, the California Canning Pear Association, the California Canning Peach Association, the Processing Pear Program Committee, and the California Raisin Advisory Board.

Initially, the interagency 301 Committee expressed reluctance to accept the petition on the grounds that injury to the industry had not been established in sufficient detail. This reluctance, if it reflects an institutional policy, threatens to reduce the GATT to an ineffective and meaningless tool. The GATT is of little use if protection is only forthcoming after serious and perhaps irreparable injury has been caused to U.S. industry. To adequately protect our domestic industry, any breach of GATT rules must be assumed to have an adverse effect on a complaining party, whether or not injury has been shown.

Furthermore, the regulations, as currently written, do not require that all petitioners provide a detailed showing of injury. Rather, evidence of injury need only be provided by the petitioner "to the extent possible", 15 C.F.R. 2006.1(f). This established requirement is appropriate; as in any judicial context, a party should not be required to try the case in his initial complaint.

It is our understanding that our petition has been accepted by the Office of the U.S. Trade Representative and that consultations will be requested under Article XXXIII:1. We are heartened by this report, in light of our previous favorable experience with Article XXIII procedures. The success of this action, and indeed the economic well-being of all U.S. industries involved, depends on how forcefully our own government will push the case in the GATT. Article XXIII provides no time limits. Therefore, our negotiator can press forward with our case with all due haste.

CONCLUSION

Ambassador Brock, Secretary Block and other top U.S. officials have publicly articulated the need for a strong and consistent trade policy relating to agriculture. We heartily support this position. Nowhere is this need more apparent than in the Section 301 and GATT procedures. Experience has taught us that these procedures can work but their efficacy depends heavily on aggressive support by our government. We seek this Committee's help in assuring that this support is provided.

Respectfully submitted,

W. R. HOARD, *Manager.*

STATEMENT OF SHELDON J. HAUCK, PRESIDENT, NATIONAL SOYBEAN PROCESSORS ASSOCIATION

INTRODUCTION

This statement is submitted on behalf of the National Soybean Processors Association in response to the Subcommittee's announcement of oversight hearings on U.S. trade policy. Our testimony will address the administration and adequacy of U.S. trade laws, in particular, Section 301 of the Trade Agreements Act, as well as domestic trade policy as it relates to agriculture.

The National Soybean Processors Association (NSPA) is the trade association of America's soybean processors. Our members process and market more than 95 percent of all soybeans crushed within the continental United States. From nearly 80 processing centers in every major region of the nation, NSPA members serve the American agricultural community, American consumers and the world market.

During the most recent marketing year ending September 30, 1981, over one billion bushels of the 1.8 billion bushels of soybeans harvested in the United States moved through the processing plants of our association's 23 member firms. Our members bought and processed approximately 56 percent of our nation's soybean crop.

International trade is vital to the economic health of our nation's soybean growers, processors, and exporters. During the 1980/81 marketing year, the United States exported 720 million bushels of soybeans valued at $5.4 billion, 6.8 million short tons of soybean meal valued at $1.5 billion and 1.5 billion pounds of soybean oil valued at $345 million, for an aggregate export trade value of $7.2 billion. Exports represented approximately 40 percent of the soybean crop; 28 percent of the soybean meal; and 13 percent of the soybean oil production. The contribution of the soybean complex products to our nation's export performance and to the health of the U.S. balance of payments is unquestioned.

The NSPA respresents an industry which has long been a highly successful and healthy export industry. However, we are concerned that the 1980/81 trade performance for our industry is down from the 1979/80 performance on all counts. Exports of soybeans declined by 155 million bushels; exports of soybean meal declined by 1.1 million short tons; and exports of soybean oil declined by 1.2 million pounds. The total export dollar loss for the 1980/81 marketing year as compared to the 1979/80 marketing year was approximately $1.5 billion.

While changing export performances from year to year can perhaps partially be explained by changing economic conditions, over the years, our industry has been plagued by unfair trade policies of foreign governments which have caused distortion in our international export markets and negatively impacted the U.S. share of those export markets. Our domestic laws, primarily Section 301 of the Trade Act, have been involved on several occasions in our industry's recent history in an attempt to challenge and eliminate these unfair practices. This challenge has taken various forms which will be described below.

SECTION 301: EEC

In 1976, the National Soybean Processors Association in conjuction with the American Soybean Associaton, filed a Section 301 case against the European Economic Community's scheme for disposing of its surpluses of non-fat dry milk which had the effect of imposing a major portion of the cost of EEC milk price support operations on third country soybean producers such as the United States. The scheme further served to distort and confuse normal patterns of world trade in soybeans and soybean products.

The industry filed its petition under Section 301 on March 30, 1976, and the United States informed the GATT Council in April, 1976 that it had entered into consultations with the EEC under Article XXIII:1 of the GATT. On July 15, 1976, the United States referred this matter to the Contracting Parties and sought the formation of a panel pursuant to Article XXIII:2, since it had not been possible to reach a satisfactory resolution of the matter pursuant to consultations. On September 17, 1976, the GATT Council agreed to establish a panel, the composition of which was agreed to on March 2, 1977. The GATT panel issued its report on December 2, 1977. In mid 1978, the Contracting Parties adopted a report of the GATT panel which substantiated the U.S. position that practices of the EEC regarding certain requirements associated with the importation of soybeans constituted a violation of the EEC's GATT obligations.

Thus, it has been demonstrated that when the United States government chooses to put its full force and effect behind efforts to protect the trade interests of U.S. industries, Section 301 and GATT procedures have in the past been effective tools.

SECTION 301 CASE: BRAZIL

In 1976, the NSPA also prepared to file a Section 301 case against the government of Brazil seeking relief from Brazil's export subsidy and other direct and indirect assistance programs on soybeans, soybean meal and soybean oil exported outside the borders of Brazil. It was alleged by our industry that the export subsidies and other incentives were of sufficient magnitude so as to displace U.S. soybean and soybean produce exports in third country markets.

The industry's intentions with regard to the filing of a Section 301 case were made known by high ranking U.S. government officials to Brazilian government officials. As a result of these discussions, the government of Brazil eliminated the major forms of tax credits which were being applied to exports of soybean oil and which would have been a primary focus of the U.S. industry's complaint. Resolution of the matter short of filing a formal complaint was achieved through a joint cooperative effort at the highest levels of government. Secretary of the Treasury, William Simon; Secretary of Agriculture, Earl Butz; and U.S. Trade Representative Frederick Dent, as well as other U.S. government officials, joined together to persuade Brazil to withdraw certain of its subsidies. The existence of the Section 301 procedure, coupled with aggressive and unified action by top government policymakers, combined to result in a reconsideration of policies by the government of Brazil.

SECTION 301: SPAIN

Spain produces only one percent of its soybeans and imports most of its beans from the United States. In 1975, it initiated a domestic quota on the amount of soybean oil which can be sold in Spain. Over the past five years, the quota has been set at progressively lower levels. As a result, soybean oil currently represents only 12 percent of Spanish vegetable oil consumption, less than half of what it was ten years ago.

The quota system serves to protect domestic producers of olive oil and sunflower oil. Not only does it deprive the United States of a natural Spanish domestic market for soybean oil produced in Spain from U.S.-origin soybeans, but it also distorts international trade patterns by displacing markets for U.S. origin soybean oil in third countries.

The trade distorting effects of this system are further exacerbated by a Spanish pricing system for soybean oil which subsidized Spanish crushers' margins on domestic soybean oil sales by approximately $100 per metric ton. This subsidy enables Spanish crushers to be extremely price competitive, as compared with the United States, on soybean oil which has been purposely diverted to third country export markets.

In 1979, the office of the U.S. Trade Representative filed a GATT complaint against the Spanish system. USTR filed the case on its own initiative. In December 1980, to the great consternation of our industry, the GATT panel rendered a decision unfavorable to the United States despite assurances by USTR that the Spanish system was a clear-cut violation of GATT.

Subsequent to the adverse finding by the GATT panel, it was readily apparent to our industry that it was necessary to discredit the panel report in the GATT Council. Nearly another year elapsed before this important matter was finally brought before the GATT Council for resolution. The Council refused to adopt the panel report. This does not often happen. Equally as significant, our United States negotiators were able to enlist the support of approximately 20 countries who spoke up in opposition to adoption of the report at the GATT Council meeting.

This particular case is instructive. It demonstrates the importance that politics plays in GATT proceedings. Thus, it is essential at all stages of proceedings before the GATT to conduct a "lobbying" effort simultaneously with preparation of our legal case. Not only is it necessary to gain the support of GATT officials in Geneva, but it is necessary to work closely with other GATT Contracting Parties in order to obtain support among the GATT membership for the U.S.'s position. It is clear from our experience in the Spanish case that the Europeans understand the importance of the political aspects of the GATT.

Finally, this case is extremely important for reaffirming that a showing of injury is not required before an industry can seek relief from unfair trade practices in the GATT. Such a position would make the GATT a totally ineffective instrument for redressing its Signatories' trade grievances. Ambassador Mike Smith, representing the United States in GATT proceedings in Geneva, forcefully espoused the U.S.'s position that a breach of GATT rules is assumed to have an adverse effect on a complaining party and that injury was not required to be shown. As previously indicated, the U.S.'s position was supported by other Contracting Parties.

Although our industry is pleased with the outcome of the GATT Council meeting held on November 3, 1981, the Spanish system nonetheless remains intact and must be eliminated prior to Spain's accession to the EEC. The failure to eliminate the Spanish practices will, in our opinion, seriously jeopardize the zero duty binding for U.S. origin soybeans and soybean products into the EEC. The importance of the EEC as a market for U.S. soybeans and soybean meal is tremendous. A loss of the EEC market means a loss of nearly $4 billion in exports. Neither our industry nor the U.S.'s balance of payments can afford the loss of this revenue.

Our industry has not yet determined whether to bring its own 301 case against the Spanish system. The matter will be further considered by the industry and a decision made on how to proceed.

OTHER MAJOR TRADE ISSUES

The NSPA is greatly concerned about other developments in the international trade arena. First, the EEC has repeatedly proposed some form of tax in vegetable oil and fats in order to pay for its costly subsidies which are integral to the Common Agricultural Policy. Such tax, if adopted, would affect the consumption of soybean oil crushed in the EEC from U.S.-origin beans and discourage the utilization of soybean meal in feed formulation. Thus, such a tax would represent a clear nullification and impairment of the zero duty bindings on soybeans and soybean meal and is tantamount to a request from the EEC to the American farmer to pay for the cost of its subsidization of uneconomic production. The EEC's efforts in this regard must be strenuously opposed by our U.S. negotiators.

The industry is also concerned with subsidies imposed by Brazil and Argentina, which, together with the United States, accounted for over 95 percent of the world export market of soybeans over the past five years. As a result of Brazilian differential export tax and preferential financing schemes, which serve to encourage exports of soybean products over raw beans, Brazil's share of world soybean exports has declined while its exports of soybean meal have continued to grow. This is also generally true for soybean oil. In 1980/81, Brazil's share of the meal and oil market surpassed that of the United States.

In 1980, the Government of Argentina instituted a system of export rebates on soybean oil and meal which, if unopposed by the United States, will have the same effect in the future as the Brazilian subsidies have had over the last five years in eroding the U.S.'s share of world markets in soybean products. This will have disastrous effects for the U.S. soybean farmer.

Additionally, our industry is concerned that the Government of Austria is proposing to impose import licensing fees for oil cake or to impose regulatory taxes in violation of commitments made in 1969 not to take such action.

Our industry also faces trade problems in Malaysia, which had proposed to increase duties on imports of soybean meal by 20 percent as well as to establish interim quotas on soybean meal imports. In March of this year, our industry was advised that the import duty on soybean meal was lowered from 15 percent to 8 percent but that the 5 percent surtax on soybean meal imports would remain. Our industry believes that Malaysia's continued imposition of levies on soybean meal imports constitutes an unfair trade barrier and that such levies should be removed.

CONCLUSION

Statements in recent months by top U.S. government officials point toward a new era in our U.S. trade policy as it relates to agriculture. A strong, cohesive trade policy to deal with increasing protectionism around the world and the resultant unfair trade practices is desperately needed.

Our industry has seen the results of use of Section 301 of the Trade Act and accompanying GATT procedures in varying circumstances. These cases demonstrate that the procedures can work, but their effectiveness is conditioned upon the degree of commitment and effort made by our responsible government officials. In this regard, we would urge the continuing participation and close involvement of the Congress in assuring that its intentions with regard to our nation's trade policy are carried out, and in assuring the continuing health of our nation's farmers and the U.S. economy.

Respectfully submitted.

STATEMENT OF WAYNE E. SWEGLE, PRESIDENT, MILLERS' NATIONAL FEDERATION

INTRODUCTION

This statement is submitted on behalf of the Millers' National Federation in response to this Subcommittee's announcement of oversight hearings on U.S. trade policy. The focus of our testimony will be on the administration and adequacy of U.S. trade laws, in particular, Section 301 of the Trade Agreements Act, as well as the related efficacy of the dispute settlement mechanisms of the Subsidies Code.

The Millers' National Federation is the trade association of the U.S. wheat and rye flour milling industry. Our members own and operate 133 mills in 36 states and Puerto Rico. Collectively, the Federation represents more than three-fourths of this country's commercial flour milling capacity.

The Federation speaks on behalf of its members on matters of general industry concern including international trade policy. The Millers' National Federation has been active in international trade matters on behalf of its members since 1952.

The competitiveness of U.S. flour in world markets has been seriously eroded over the past two decades due to the EEC's practice of excessively subsidizing its exports of wheat flour in order to assure sales of its excess production in third country markets. Due to the EEC's practices, which effectively shut us out of most world commercial flour markets, more than 70 percent of total U.S. flour exports currently move under P.L. 480.

The EEC's subsidy is the subject of a Section 301 case filed by the Millers' National Federation more than six years ago. The case remains unresolved. The utlilization and effectiveness of existing tools to seek redress from the EEC's practices as they have been applied to our case will be set forth below.

U.S. WHEAT FLOUR CASE UNDER THE GATT

The U.S. wheat flour Section 301 case is one of the oldest pending cases. It was filed in 1975 pursuant to Section 301 of the Trade Act of 1974. Consultations were held pursuant to Article XXII of the GATT in February of 1977. Both Canada and Australia participated in those consultations with the EEC. Those consultations were inconclusive.

Our industry was hopeful that this important matter would be resolved in the course of the Multilateral Trade Negotiations (MTN). The case was not resolved during the MTN, but as this Committee knows, a new Subsidies Code was developed. Also, the Congress, guided by this Committee, strengthened the provisions of Section 301 and provided specific guidance with respect to pending Section 301 cases such as ours in its Report accompanying the Trade Agreements Act of 1979.

Although the Subsidies Code went into effect on January 1, 1980, our negotiators initially failed to make use of this highly-touted document in our case. Instead, in July of 1980, the United States again requested consultations pursuant to Article XXII of the GATT. These consultations were held on October 3, 1980. The EEC continued to make every effort to "stonewall" a resolution of the matter.

THE U.S. WHEAT FLOUR CASE UNDER THE SUBSIDIES CODE

Our industry has recently been heartened by a decision by the Office of the U.S. Trade Representative, in conjunction with the U.S. Department of Agriculture and other members of the interagency Trade Policy Committee, to invoke the applicable provisions of the Subsidies Code in our case. On September 29, 1981, the United States requested formal consultations under Article 12 of the Subsidies Code. These consultations were held with the EEC on October 28, 1981. As with the prior consultations, there was no resolution of the matter.

Subsequently, the United States notified the Subsidies Code Committee of its intention to move to the next phase of the dispute settlement procedures outlined in the Code. On November 9, 1981, the United States communicated to the Chairman of the Subsidies Code Committee its formal request to enter into conciliation pursuant to Article 13 of the Code. During the thirty days provided in the Code for conciliation, the EEC has continued to take every opportunity to forestall a resolution of the matter.

This Committee's hearing is very timely, as our industry has just received a report that the Subsidies Code Committee met again on Monday, December 14, 1981 in Geneva to take up the matter of our case. Because of the EEC's failure to seriously enter into conciliation efforts, the United States formally requested the establishment of a panel pursuant to Article 17 of the Code. The Code provides that the panel should be constituted within thirty days, or by January 14, 1982.

After six long years of repeated bilateral discussions and consultations, our industry is gratified to learn that at long last our government is taking a firm position with respect to the EEC's excessive subsidies practices and is utilizing the tools available to it to pursue the matter vigorously. Because the Subsidies Code procedures are new and untested, a successful resolution of our case will require the continuing close attention of government officials at the highest levels. It will require a major effort on the part of our negotiators to seek the support and assistance of other Signatories to the Code who are sympathetic to our position. In addition, it will require the continuing watchful eye of this Committee to assure that the Subsidies Code procedures are determined to be a viable alternative to existing GATT procedures for successfully resolving disputes such as the wheat flour case.

CONCLUSION

The U.S. Wheat Flour Section 301 case provides this Committee with an excellent example of a case which was filed pursuant to section 301 of the Trade Act of 1974 and was originally the subject of consultations pursuant to Article XXII of the GATT. During the Multilateral Trade Negotiations, a new Subsidies Code was negotiated which was notable for the specific time limits set forth for resolving a subsidies case. However, it took nearly two years for the United States to announce its intentions to pursue a resolution of our case under the Code.

The members of our industry are hopeful that the Subsidies Code will prove to be a viable tool for challenging practices such as the EEC's excessive wheat flour export subsidies. The United States must do everything possible to assure a successful resolution of this matter. It is important to our industry. It is equally important to numerous other agricultural industries which have filed more recent cases challenging the EEC's subsidies practices. The precedents to be set by our case are critical.

The EEC's subsidies practices have turned its Common Agricultural Policy into a Common Export Policy to the detriment of U.S agricultural trade interests. The United States must insist that the EEC stop its trade distorting practices in the interest of sound international trade policy and the restoration of a healthy U.S. balance of payments.

Respectfully submitted.

WAYNE E. SWEGLE, *President.*

Chairman GIBBONS. Mr. Sandstrom.

STATEMENT OF MARK ROY SANDSTROM, PARTNER, LAW FIRM OF THOMPSON, HINE & FLORY, WASHINGTON, D.C.

Mr. SANDSTROM. Mr. Chairman, I will try to summarize my statement and ask also that it be included in full in the record.

Chairman GIBBONS. It will be.

Mr. SANDSTROM. My name is Mark Sandstrom, a partner in the law firm of Thompson, Hine & Flory and counsel for the Great Western Sugar Co. of Denver, Colo. I appreciate the opportunity to appear before you today to discuss the operation of the dispute settlement mechanism incorporated in section 301 of the 1974 Trade Act, as amended.

My motivation for testifying today is twofold. In the first place, I have filed a section 301 petition on behalf of my client, the Great Western Sugar Co., in opposition to the subsidization of sugar exports by the European Community. Pursuant to this petition, which was accepted on October 5 of this year, the United States is currently seeking to establish consultations with the EC under the dispute settlement procedures of the GATT subsidies code.

In addition to my client's interest in section 301, I also have a professional interest in this statute since I was involved in the drafting of the original legislation both as an attorney with the administration in 1973 and with the staff of the Senate Finance Committee in 1974. I believe section 301 to be both a significant and very useful trade statute, and I am concerned that it be utilized as intended by the Congress.

Section 301 is a very signficant provision of U.S. trade law for several reasons. In the first place, it provides the President with extremely broad sanctions which could be used against countries which violate U.S. international agreements or unreasonably or unjustifiably burden U.S. commerce. Yet despite, or possibly because of, the strength of retaliatory options available under section 301, this legislation has never been used to retaliate against a foreign government in the past.

The best use of section 301 has been as leverage, or a club if you will, to force the offending country to cooperate with the United States in attempting to resolve disputes brought under this section. As a result, most of the 301 cases which have been brought since 1974 have been resolved more or less to the satisfaction of the original petitioner.

A second aspect of this authority which is signficiant and unique is that it provides a method whereby U.S. private interests can directly mobilize the U.S. Government to prosecute their complaints against the offending foreign government. There is very little comparable authority under U.S. law which enables private parties to have such clear recourse against a foreign country through the direct intervention of its own government.

Third, section 301 is significant from a legal and trade policy standpoint in that it links domestic law aimed at protecting domestic interests directly to an international dispute settlement mechanism adopted in Geneva during the Tokyo round of the multilateral trade negotiations. Disputes raised under Section 301 which allege violations of U.S. trade agreement rights under the GATT and the GATT codes are to be settled by international tribunals pursuant to generally accepted international trade standards and procedures.

This link between section 301 and an international dispute settlement process is advantageous to domestic petitioners since it enables them to seek redress directly against foreign governments whose practices are adversely affecting their interests. On the other hand this link is beneficial from the broader trade policy perspective since it provides that many bilateral trade disputes can be resolved in accordance with internationally agreed upon standards. Thus, I feel that section 301 is an extremely valuable instrument for the resolution of trade disputes and that it should therefore be properly utilized and promoted by the United States.

With this in mind, I would refer to my specific motivation for testifying here today. As mentioned earlier, I have filed a section 301 petition on behalf of the Great Western Sugar Co. against the subsidization of sugar exports by the European Community. This action has the broad support of the domestic sugar industry. The U.S. petition joins earlier GATT complaints which have been filed by the governments of Australia and Brazil against the EC sugar regime.

In our petition, we allege that the EC sugar export subsidies violate articles 8 and 10 of the GATT Subsidies Code and also unreasonably burden U.S. commerce. In particular, the subsidies have displaced sales of U.S. exports abroad, resulted in price undercutting in world markets, and severely depressed the prices at which U.S. producers are able to sell sugar in the United States. I do not wish to take time today to argue the merits of the petition except to say that we have a strong case to bring against the EC practices, one that I hope the U.S. negotiators will continue to prosecute vigorously in Geneva.

There is, however, one development in our proceeding which deeply concerns us and which we believe should also be of concern to this committee. Upon the acceptance of a section 301 petition, as Mr. Heron has already indicated, the U.S. Government is required to request immediate consultations with the government against whom the petition is brought. Under article 12(5) of the Subsidies Code, the country to whom this request is made is required to enter into such consultation with the country making the request "as quickly as possible."

Furthermore, article 13 of the code specifies that the period for consultations shall run only 60 days from the date of the original request. Thereafter the country initiating the request is permitted to move to the conciliation phase of the Subsidies Code dispute settlement procedure.

Notwithstanding these clear requirements of the code and notwithstanding the fact that more than 60 days have passed since the U.S. first requested consultations with the Community, the EC has failed not only to consult but has yet to even agree to a date to begin the consultation. All the Community has done up to now has been to indicate that its sugar export subsidies are not in violation of the code and that the request to consult did not provide adequate information relating to the serious prejudice caused the U.S. industry by the EC sugar regime.

The EC has in effect been arguing the merits of the case at the consultation request stage of the dispute settlement procedure—an occurrence never intended by the drafters of the code—in an attempt to stall the United States from seeking redress under the Subsidies Code.

It is one thing for the EC to defend against this petition under the rules set out in the GATT Subsidies Code. It is another thing for the Community to refuse to begin consultations as required under the code's dispute settling procedure, a procedure to which it agreed in Geneva in 1979.

As this committee is well aware, the United States made a number of significant concessions of its own as part of the negotiations leading to the new Subsidies Code adopted in Geneva during the Tokyo round. Not the least of these concessions was the addition of an injury standard in the U.S. countervailing duty law. The United States agreed to its concessions with the understanding that the new Subsidies Code would establish stricter standards with respect to export subsidies and procedures for settlement of disputes, including specific time limits for the resolution of such disputes.

Yet, in one of the very first cases that has ever been brought under the Subsidies Code, pursuant to section 301, more than 2 months have passed and the European Community has failed even to set a date for consultations as is required under the code.

My client is concerned because its section 301 petition has not, as yet, begun the process which will hopefully lead to a resolution of the problem. This committee should be concerned because the international agreement and dispute settlement mechanism to which the United States agreed to has basically been ignored by the EC in this case.

If the Community continues its current policy in this case and in the other section 301 cases which have been recently filed against it, the whole dispute settlement mechanism and the GATT Subsidies Code as well could be in jeopardy. If the code proves ineffective, international dispute settlement could give way to unilateral protective actions on the part of trading nations. Such a result would not be in the best interests of this country or of our other trading partners.

We would ask that this committee take steps to monitor closely the progress of this section 301 petition in Geneva, as well as others which have been filed under this legislation. Further, the members of this committee should make it clear to the European Community and our other trading partners that the United States views this multilateral system of dispute settlement very seriously and that we expect adherence by our trading partners to the procedures which have been established and to which they have agreed.

We believe that those Members of Congress and those administration officials who are charged with responsibility for U.S. trade law and policy must insure that section 301 and the GATT dispute settlement system to which it is linked are respected and adhered to by all.

This concludes my testimony. I would be happy to answer any questions which committee members may have.

Chairman GIBBONS. Thank you very much. I think we sometimes get lost in our countervailing and dumping matters and forget about this very useful tool in the act. I know what people at the table had to do in developing this.

I am glad to see that you are out there in the private sector making it work. I think that is more important. There is perhaps a limit, I am sure there is a limit to what Government can do to make any of this work, and total involvement of the private sector and its faith in affirmative action being taken, and taken vigorously and taken with skill is most important.

Let me ask you as a panel, are you satisfied with the way 301 type cases once accepted by the Government have been prosecuted? Certainly you are not on sugar. At least I do not think you are on sugar.

Mr. HERON. Mr. Chairman, it is difficult to answer that question generically. Some cases are prosecuted very rapidly. Others are not. For rapidly prosecuted cases, it would be difficult to have a legitimate complaint that would really be substantive. For slow cases that just hang there and hang there, it would be difficult to have a favorable comment about them.

The thing that perhaps we should keep in mind is that each 301 case most likely represents a failure perceived on the part of the private sector for the U.S. Government to go forward on its own initiative to preserve U.S. trade interests.

Your committee has heard lots of testimony, and the testimony just preceding us, about all the involvement in keeping our markets open, with the dumping and countervailing laws. With that posture, the United States should look at each trade barrier as an opportunity to expand our exports and go forward on their own, when the private sector identifies them through its meetings with Government.

Cases under 301 do not come as a surprise. There have been long consultations between the private sector and the affected industry, and the 301 case really results out of frustration on the part of the United States for not going forward actively, so even in the good cases, it is not a true success story.

Mr. RIVERS. Mr. Chairman, I might speak from my own experience. Ideally the system should work that every individual with a grievance has a right to bring it, have it evaluated, and obtain a hearing. The U.S. Government should consider it, and if it is a bad case, if it does not state a case that can be won or is otherwise deficient, the petitioner ought to be told that, explained why it is being turned down and that case should be put aside.

But once a decision has been made to go forward with a case, that somebody has a case, then there ought to be vigorous prosecution of that case by the U.S. Government.

Unfortunately we often in a practical way fall very short of that ideal. In my experience the biggest negotiation in a section 301 occurs within the U.S. Government among the agencies. It is an exhausting process. If you are lucky to survive that—if you can get to the point where the U.S. Government finally agrees; and all those agencies downtown finally agree that yes, this is a case; and somebody has got a grievance here; and we really ought to go out and do something about it; and we ought to go abroad and enter into negotiations with the foreign government—in my experience those negotiations are less of a challenge than the ones that occur downtown here.

Chairman GIBBONS. That is terrible.

Mr. RIVERS. If a foreign government perceives that this is a matter that the U.S. Government takes seriously, then these disputes have a way of working out. The problems arise, however, where you have division in the ranks. If you have agencies blocking your path, throwing furniture in your way, and squabbling even after the case is initiated it is highly unlikely that a satisfactory result can be achieved.

A way has to be found to cut that off. Once it is decided to go forward with a case, the U.S. Government should present a united front.

Chairman GIBBONS. Mr. Frenzel had to go to the floor, because he is involved in much of the legislation that is appearing on the floor this afternoon. Before he left he left a question in writing for Mr. Heron.

He wanted to know whether the Millers' National Federation, whether they were satisfied with how the *Wheat Flour* case has progressed so far, and what their feelings are about its status now?

Mr. **HERON**. I thank you, Mr. Chairman. With your permission and the committee's permission, may I suggest that Mr. Swegle, president of the Millers' National Federation, respond to that.

Chairman **GIBBONS**. Yes, sir. Go right ahead, sir.

Mr. **SWEGLE**. Thank you, Mr. Chairman.

We are very appreciative of the interest and support of this committee, and especially Mr. Frenzel in behalf of our case. It is a matter of practical understanding that it is often the interest of the Members of Congress in some of these cases which cause the agencies downtown to move forward.

After 6 years of frustration, of being put off, of failure of our Government to move resolutely in our case, we have engaged the system in recent months. When we engaged the Subsidies Code—and our case is being used to test the Subsidies Code—once that decision was firmly made, we have been very pleased. We went to consultations with the Community, following several consultations over the years which have been nonproductive. We got into the Subsidies Code procedure, and when that consultation was not successful, then our Government called for conciliation.

The period for conciliation—the 30 days, plus 5 awaiting the convening of the Subsidies Code Committee—has expired and the Subsidies Code Committee meeting was held on Monday. Our Government went in and resolutely asked for the convening of a panel, explaining that conciliation had not been successful and would not be successful, and called for convening of a panel.

That 30-day period for appointment of a panel expires on January 14, and it is the determination of our Government, and I think very seriously, that a panel will be appointed as of that date, and then the process goes forward. As of now our industry is very pleased—again after many years of frustrating inaction.

Again we are grateful for the interest of your committee in this regard.

Mr. **HERON**. Mr. Chairman, with your indulgence, Mr. Light who flew in from Tokyo indicated that he would like to answer the chairman's previous question, if he might be permitted to make a comment.

Chairman **GIBBONS**. Yes, sir, we welcome you here, and we sympathize with that stuff called jet lag.

Mr. **LIGHT**. Thank you, Mr. Chairman. I had to comment this is my first experience here and I have a little stage fright, too, on top of the jet lag. I had to comment on this feeling of government support on international trade.

Many of us in the raisin industry and at Sun Diamond with our walnuts, prunes, and raisins feel just utter frustration. We have seen our markets chipped away or frustrated all over the world, and we have watched this economic community for the last 4 or 5 years put us through fire drills that you cannot imagine, and we see it all coming, but the problem is, as a matter of fact many of us say that the only government that is really not actively involved in trade is our own Government, and coming back here and trying to get our Government's attention before we are hurt and get into a preventive posture is almost impossible.

The only attention that I really think we have had is now that we are on our knees, now that we have lost almost 60 percent of our raisin market in Europe, we finally I think have demonstrated maybe we are damaged, and maybe we will get some quick action on the 301, so when I see our colleagues and their success on 301, we just really wonder where it is all going to come. The idea of being dead before you are resurrected just does not go very well with our industry, and I hope something can come out of these hearings to help straighten that out.

Chairman GIBBONS. I took very seriously Mr. Heron's observation about probate court. We do not want to operate a probate court for American industry around here.

Mr. LIGHT. We have that feeling.

Chairman GIBBONS. I have two boxes of your raisins, one in Florida and one up here, and I eat them regularly. They are excellent, and I do not know why the Europeans punish themselves by taking your raisins out of their market.

Mr. LIGHT. Mr. Chairman, we can beat them every time on our quality but when they come in at half our cost it is pretty tough.

Chairman GIBBONS. Where are they getting their raisins from?

Mr. LIGHT. Greece and Turkey.

Mr. HERON. The Europeans extended their domestic subsidies to processing firms this August to include raisins as an effort to assist their new member, Greece, particularly before its election. That has had the result of displacing the U.S. market entirely, and upon information and belief, it is having the same effect upon Turkey and Australia.

Chairman GIBBONS. You mean Turkey and Australia are also losing their market?

Mr. HERON. Yes, Mr. Chairman.

Chairman GIBBONS. Europeans are out to destroy themselves, the way it looks. I hope that the raisins are——

Mr. LIGHT. What happens, Mr. Chairman, you are right. I wouldn't even feed it to the hogs. But for $1,000 a ton differential you can hand pick, hand wash them one by one, and make them edible. Their farmers actually get more than our farmers, guaranteed. But in the marketplace they are selling for $1,000 a ton less than ours in the European market.

The nuances of the way they underwrite this means there are seven or eight different ways they get to the market: processor subsidies, free storage, export incentives outside the community. It is those nuances, by the way, too, that make it even more difficult for us to prove that we are actually damaged.

That is what makes it hard for us to understand why we have to come to Washington to prove that we are being ripped off. I got carried away. Excuse me.

Chairman GIBBONS. You mean they are selling their raisins in their market at 50 percent of what we are able to deliver there, mainly through a group of quiet subsidies within their own market?

Mr. LIGHT. Correct.

Chairman **Gibbons**. What we jokingly refer to as Lenin socialism, something like that?

Mr. Bailey?

Mr. **Bailey**. They didn't do much good over there in Europe, they elected a socialist that wants to pull out of the European Common Market. Maybe it is time to change their policies and start buying their raisins.

Chairman **Gibbons**. Let me ask you, what is the view of the panel about the applicability of section 301 to investment practices, such as export performance and local content requirements? Does section 301 currently afford appropriate remedies?

Mr. **Rivers**. May I address that, Mr. Chairman?

Chairman **Gibbons**. Yes, sir.

Mr. **Rivers**. I think we need to recognize at the outset that when the President chooses to use section 301—or his agents accept a case under section 301—we are really operating in the area of the foreign affairs power of the President.

So there is no question in my mind that in the abstract in this area, the President can consult or negotiate with a foreign government on any topic he thinks appropriate. With respect to remedies, however, were someone to bring a pure investment case, my experience tells me that the fight one would have in the bureaucracy would be so uphill——

Chairman **Gibbons**. The U.S. bureaucracy?

Mr. **Rivers**. The fight within our own Government would be so uphill as to make it impossible as a practical matter. As a matter of law, there is no question in my mind that consultations or negotiations on an investiment dispute could be initiated under section 301. As a matter of policy, I don't think it is likely to be successful. You do have the question of what if such a negotiation were to fail, and what retaliatory authorities are within the power of the President's reach, either delegated to him by the Congress, or in his capacity as the President, under the Executive power.

But I guess to summarize, I think as a matter of law, it is there. As a matter of policy, it is not likely to happen unless Congress really, you know, so declares it explicitly in the statute, and even then it would be uphill.

Now, in the services area, you frequently run into a policy argument which is a little metaphysical. This was the case in the Korean insurance case, where it was argued by some that it was not a trade in services case, but a right of establishment case.

This was one of the objections that were heard downtown among the executive branch agencies. We pointed out that the client had in fact been established in Korea since 1953, that it was not a right of establishment case, it was a denial of national treatment in that the client was not being treated in the same manner in which Korean companies were being treated.

So in the services area, I think you need to carefully distinguish between investment which is merely ancillary to trade in services and other types of investment. In the former kind of a case I don't think that objection ought to be permitted to impede a section 301 complaint at all. The fact is, it is necessary to have an office, a branch office, and personnel there in order to provide any type services, be it accounting or advertising or banking.

On the other hand I think the pure investment case, it would be very difficult as a policy matter to prevail in a section 301 case the way the law is presently written and because of the policy objections which would be raised.

Mr. HERON. Mr. Chairman, I agree with Mr. Rivers' answer. The question really hits at the point that was made about the legalistic approach that is used now. If the committee studies the regulations governing petitions, it would be very difficult to bring that kind of case under existing regulations.

And the committee is probably far more aware of it than we in the trade bar are, that there is under active consideration an amendment to those regulations to make them even more restrictive. That comes to the earlier point that the committee may wish to encourage the Office of Special Trade Representative to accept all or virtually all of the petitions filed, and at least let them go to the point of a hearing, so a full record can be developed.

And at a minimum, there then would be a record for your committee to look at for oversight purposes. As perhaps the best illustration, the very first case that was ever brought, and that was under section 252, the predecessor of section 301, was brought by the California-Arizona citrus industry only after it had reached the point of threatened litigation because STR had been determined not to accept the case back in 1969.

And the petitioner that wanted to bring the case was the Florida Citrus Industry. They finally got thoroughly frustrated and discouraged by the administration saying, no, no, no, don't bring the case.

So if anything, there ought to be a clear congressional intent to let anyone in the United States who believes there is a foreign practice affecting U.S. export interests, whether it is trade, investment or services, to bring the case, make the record. Then this committee would have a place to look to see how the United States is performing in assisting U.S. businessmen and farmers in moving goods, services or investment overseas.

Chairman GIBBONS. That is a very instructive idea. I don't see why we can't incorporate that into some remedial legislation, because I know how frustrating it is to try to get just an inventory of what people's complaints are. We don't really have a place in this Government that keeps those kinds of inventories.

We don't know them. They just get sloshed around town here. Everybody goes off frustrated, saying my government won't listen. When they do listen, they can't hear. When they hear, they don't act. We need to put an end to that.

Mr. LIGHT. Yes, sir.

Chairman GIBBONS. That is what is driving us all up the wall.

Mr. SANDSTROM. I would like to join with Mr. Heron and Mr. Rivers by stating that in order to bring the sugar 301 case, we must have had 40 different meetings in about 8 or 10 different agencies in addition to several long, informal interagency hearings. We spent maybe 10 times as much time in getting the case accepted as we did——

Chairman GIBBONS. If I understand the sugar case, I can't understand why in the world the Government refuses, or was slow with the community. What excuse did they give?

Mr. **Sandstrom.** Again, it is a legalistic approach. Our case didn't fit as neatly into the GATT subsidies code as compared with other types of agriculture cases that had been brought before.

It was clear there was injury there. It was clear that the EC was causing the injury. We had to spend a lot of time educating people as to those facts and giving them a sufficient legal framework so that they could accept it.

It was a lot of work. I agree with you. I don't know why it had to take so long.

Mr. **Rivers.** Mr. Chairman, could I state something for the record in the capacity of a private citizen but also as the individual who had responsibility for negotiating the subsidies code in the Tokyo Round on the part of the United States? In the subsidies code, particularly with respect to the question of agriculture and third-country markets, it is easy to slip into a habit of talking about injury or trade damage.

That is easy for us to talk about, but there needs to be a very careful distinction made between injury in the sense of material injury—proving that subsidized or dumped imports are causing injury to a domestic industry—and what is a requirement of the subsidies code in other contexts that a subsidy is causing adverse effects.

Adverse effects are not the same as material injury. You can have a perfectly healthy industry—if it is losing exports in an export market because of someone else's subsidy, it is having its trade adversely affected.

All it really means is that the case has to be a real case. It cannot occur in a vacuum or a void. There have to be adverse trade effects. But it is not the injury and it is not damage. Our trading partners would like nothing better than to lure us into assuming that the code or international obligations require a demonstration of material injury in all contexts. It does not. It merely requires demonstration of adverse effects, that it has some effect on trade.

Chairman **Gibbons.** What do you think, Mr. Rivers, of Mr. Heron's suggestion about requiring the USTR to have a hearing on everything that is filed?

Mr. **Rivers.** I don't have any problem with that, provided the petitioner wants a hearing. There are cases occasionally where the petitioner doesn't want a hearing. I think also there are going to be cases that are not good cases.

Chairman **Gibbons.** Certainly.

Mr. **Rivers.** That happens. Those people ought to be told. The law provides a mechanism whereby the Government can say you haven't got a good case. But you have to tell them why, and you have to publish it in the Federal Register. A right to a hearing, that is due process. I think people ought to be given a hearing if they want it.

Chairman **Gibbons.** You wouldn't make it a prerequisite to doing anything.

Mr. **Rivers.** Just a fact-finding at that stage.

Chairman **Gibbons.** Mr. Bailey.

Mr. **Bailey.** Thank you, Mr. Chairman.

I will be very brief. I want to, first of all, thank all of you very, very much. I obviously have been here long enough, you have probably listened to me. I find myself very much in agreement with your views.

Mr. Heron, one thing, I may not have understood you. I apologize in advance if I was wrong. I thought you had said in your remarks that the role of the private litigant, the intent and purpose of the 301 proceeding is not something you think is a good idea?

Mr. HERON. Oh, no, I encourage it.

Mr. BAILEY. OK. That is what I—go ahead.

Mr. HERON. What I said was that we ought to perhaps recognize that most, if not all, 301 cases represent a perceived failure, perceived by the domestic industry of the U.S. Government to voluntarily move forward.

Mr. BAILEY. I feel much better. Mr. Rivers, you know you put it very succinctly and very well. I appreciate having your comments in the record. You made a few remarks about the intent and purpose of 301, its role.

You made some comments about there not being anything comparable in other countries. I really believe this. I have got to tell you, I think it is the most significant thing in all the hearings that has been said since we started on this thing.

There is no doubt in my mind, as we moved forward, and as we start to get some kind of an international definition for free enterprise that means anything, that really makes international trade possible, set out rights of individuals against governments and the practical things all of you have referred to, that the marketplace and private individuals are the ones really on top of information, really in a position to be able to bring actions.

I think those few comments you made about, I guess these 301 proceedings being the foot in the door in a sense of maybe starting something that will become an international practice accepted by governments around the world so we can develop some really meaningful international law on these issues.

I just want to say to you, boy, that is right up my alley, and if I can ever help in that regard, or whatever I can do in this capacity or help to expound those views, I would like to, because I think you are 1,000 percent right.

I think that is the way the free world has got to go. I don't know what you do, how you are going to deal with those nonfree market economies with those concepts.

But I think for our industrialized free world, I think you are 100 percent right. I want to thank all of you, and thank you, Mr. Chairman.

Chairman GIBBONS. Thank you. You know, I know the Europeans have been bargaining for 2,000 or 3,000 years. They are really masters at it. I admire their ability. And I guess we probably have got a number of good 301 cases against them about agricultural practices.

My question is kind of broad and philosophical. Do you think perhaps our Government is inhibited by the fact that we have had a section 22 waiver on agricultural policies for 25 years, a temporary waiver, and maybe we are reluctant to throw that into the discussion?

Or are we worried about our own subsidy practices in agriculture? You all have been at this some time. What do you feel about those observations?

Mr. **Heron**. Mr. Chairman, those are often advanced as reasons why we have to be careful in proceeding. Unquestionably, they are entitled to some consideration. But it is believed the real motivation is the historical concern that use of dispute settlement is an undiplomatic and hostile act, which it is hoped that this committee and this Congress would put to rest.

And second, because we are dealing with sovereign governments, we may not succeed. There is great concern presently in some circles that the large number of 301 cases currently pending, as compared with the past, is very troublesome because we wouldn't win them all.

That will be a signal that we need a change, or GATT doesn't work, or whatever the case is. It is believed it is just the reverse. If the United States will seriously prosecute the cases, and take them forward, then we can make this system of disputes settlement work and solve them.

We may lose a few along the way. But if we, as a country, and certainly the majority of the agricultural community believes in open trading, then we simply have to devote our resources to removing the foreign barriers to trade, whether they are in Europe, or the citrus or beef quotas in Japan.

There is just no excuse for the United States to say, well, we have to be careful about limiting imports. We will upset our trading partners. Well, we have to be careful about attacking foreign barriers. We will upset our trading partners. It is somewhat analogous perhaps to Gulliver, who got tied up by the little people.

We shouldn't be afraid of who we are, and we must go forward if we are going to remain a great nation.

Mr. **Rivers**. I agree with what Mr. Heron said, but it goes beyond that. There is this notion, widely held and often stated, that the common agricultural policy is the glue that holds the European Communities together. This, like all truisms or generalities, has probably less truth in it than truth. There is an enormous timidity on the part of U.S. negotiators to press entirely legitimate claims even for an industry like the raisin industry, or whatever, because they say, we don't want to do anything that is going to result in the dissolution of the European Community and the decline of the West.

It is an entirely wrong-headed notion in my opinion. I think when you have got a problem, you don't sweep it under the rug. The European Community has its problems. There is high unemployment in Europe. They do have their problems. But I don't think you strengthen the Atlantic Alliance by sweeping problems like this under the rug. You go and you deal with them as a community, as a 10-member European Community, and you work the problem out.

You raise these issues with them. You negotiate with them and you resolve them. But you don't just try to bottle them up with the idea that it serves some long-term strategic objective of the West.

I am very skeptical when I hear that. Most of these problems are manageable. It is a disservice to our relationship to sweep them under the rug.

Mr. **Sandstrom**. I would say also that there is a certain sensitivity toward the CAP. But the problem is not really the CAP. The problem is the way it is administered. In the case of sugar, for instance, I suppose any country has the right to protect its industry. This the European Community does at very high levels and encourages surpluses.

Now, the European Community has an intervention system whereby it could absorb that surplus sugar and hold it. Instead of doing that by using the CAP in this case, the European Community subsidizes the export sale of this surplus and assures that every single excess pound of sugar basically is sold on the world market regardless of the price.

So, to solve that problem, you don't have to destroy the CAP. You encourage them, in fact, to reform its operation and in fact use the CAP's intervention system which is already in place. So, I don't think that this should be a problem in these cases.

Mr. **Light**. Mr. Chairman, our constituency in California feels very strongly that our Government policy to keep the peace, if you will, with Greece and to keep our national defense bases there, is a lot more important than our 5,000 raisin growers. We go in there feeling we are defeated before we even start, because we don't think our Government feels we are as important as that priority.

Chairman **Gibbons**. The Greeks have threatened to throw us out over a lot less than raisins. I am not so sure our bases are secure there, anyway.

Mr. **Bailey**. Mr. Chairman, if I could comment on the European Community, and the new Prime Minister has also talked, of course, about taking Greece out of NATO. I think you are all aware of that. Maybe some of those pressures will ease up. I hope so.

Could I ask Mr. Rivers one question? Since you were involved, so deeply involved in this, you are probably the expert on it, that the discovery techniques, the tools available, I am sure you know what I am getting at, I assume it would effect you in a 301 situation, I don't know.

But could you comment on a lot of complaints that we had that Mr. Peabody, who is president of the American Iron and Steel Institute, he was commenting yesterday. I had asked him a question about discovery, something that I had picked up a long time back.

I wouldn't have your expertise on it. Is that a problem, gathering information, access to information? How much of a problem is it?

Mr. **Rivers**. An antidumping or countervailing duty investigation can be a rather complicated affair. Those two statutes are as complicated as anything you will find in the Internal Revenue Code. In the context of a countervailing duty investigation, discovery is not that significant a problem because you are really talking about a foreign governmental subsidy, typically a very public matter.

You may have a problem of finding out what law, what regulation, what program, what level of subsidization. But in dumping, discovery is often a nightmare. During consideration of the Trade Agreements Act of 1979, there was an enormous debate over the procedures, great, pent-up frustration about failure to impose antidumping duties, interminable investigations, just a general lack of due process or any process at all.

After extensive consultations and private-sector advice and consultations with the Congress—this committee in particular, we undertook to substantially revise the procedures in an antidumping case.

The responsibility for administering the statutes was taken away from the Treasury Department, transferred to Commerce. Procedures were shortened enormously. They were, in my opinion, made too legalistic in a way. There are now lots of opportunities for interlocutory appeals. But everyone was of a mind that that is something that ought to be there.

Incidentally, it is my impression that there haven't been that many interlocutory appeals to date. That might be something you might want to have your staff take a look at, find out just to what extent that is a problem. But discovery was a problem long before 1979, and I am confident—I haven't handled a case under the new law—but I am confident that it remains a problem, because what you are doing is looking into the accounts of the foreign producer to determine in a cost of production case, to determine their inputs into the cost in a particular line of production.

You typically have multiple products, you have multiple producers, you may have several countries involved. I don't know what Bob Peabody was specifically referring to. I don't know how you can get around it. There are some anomalies in it in terms of symmetry, in terms of the domestics industries' ability to discover information from the producer, and the producer, or the importer's right to discover information from the domestic industry with respect to the question of injury, profits, whatnot.

I will tell you, it is a nightmare and always has been. I don't know what we can do about that and still have a statute where you compare prices and costs of production.

Mr. BAILEY. I think we could do something. I think by the way, it might be one of the approaches in trying to do something about it that can help educate. That is my reason for asking, really.

That as a vector developing some type of international, or some type of universal standard that gives civil process a little more of a universal application, it might be one of the best ways to try to apply them, or in fact, bilk them, if we can agree in that area.

It might be viewed as a relatively small step, and I think it is one where we might be able to find some agreement internationally on trying to do something about it.

Mr. RIVERS. I might add, uniformity in accounting rules would help; uniformity in terms of what is required under the international antidumping code, uniformity in the accounting concepts, so that we are really talking about apples and apples throughout the whole process.

The terminology of the antidumping code, the domestic statute and the way businessmen actually keep their books could be straightened out. I think a lot of these cases can be distilled and handled faster and more equitably.

Mr. BAILEY. The facts and figures are plain. But you don't have a process available to you, an access available to you and the means to substantiate it. I just think that process things are the kind of things it is a lot easier to get agreement on sometimes than it is on other more substantive matters.

I would just hope in some way we could develop some type of international standard in that area. If we don't it really doesn't mean much.

Mr. RIVERS. I might say, I met regularly with Bob Peabody for at least 2 years on the domestic implementation of that law. I don't recall at the time he had views on discovery. I will go back and look at the record.

Mr. BAILEY. He had strong ones yesterday. He didn't originally raise the complaints along those lines. I raised it, but he expounded on it in much stronger terms than I thought he would.

Mr. RIVERS. He must have had a problem recently.

Mr. BAILEY. No, not really. I don't think so. I first stumbled into it. I am not that well informed really. I am just learning about these things. When we were debating the MTN. It caught my eye, too, when we started going over this stuff. We had meetings with Strauss. He was lobbying us all. I wasn't a member of this committee at that time. It just caught my eye. It is something I asked some questions about.

The answers weren't very satisfactory. It always interested me as somebody with legal training. It has never really been satisfactory.

Mr. RIVERS. It is not an area where you can give easy answers.

Mr. BAILEY. No.

Mr. RIVERS. But I will be happy to take a look at that particular issue.

Mr. BAILEY. I would be curious if you would give me some thoughts on it.

Chairman GIBBONS. Let me try to ask the panel one final question.

Is the law working better since 1979?

Mr. SANDSTROM. Talk to me in 6 months. I will tell you then.

Chairman GIBBONS. In 6 months you will know.

Mr. RIVERS. I probably ought to excuse myself.

Mr. HERON. My answer would be, not quite as well, because of the tendency toward the legalistic approach in the initial acceptance of the cases, which really doesn't go to the statutes so much, with the exception of the provision cited requiring notification of the country complained about at the time of accepting the petition.

And what that is causing, an inclination on the part of STR is to require far more complete and complex petitions, so that they are going forward on that basis.

That really calls into question, why have the hearing? If everything an industry knows is in the petition, and if whether or not a case is accepted depends upon the drafting of the petition, then why bother with the rest of the process?

Prior to the new statute, prior to that specific time requirement, STR was not quite as concerned, at least within our experience, with the contents of the petition itself, so long as it identified the practice and set forth enough to have an idea about the case.

Now, there is a great deal of concern about having all sorts of things in the petition, rather than waiting for it to be developed at the hearing where it would normally occur.

Chairman GIBBONS. Let me ask you—I thought that was going to be the last question—I assume the remarks of the three of you were directed toward 301 cases; is that right?

Mr. HERON. Mine were entirely, Mr. Chairman.

Chairman GIBBONS. Now, let me ask you about countervailing and antidumping. Are they working better since 1979?

Mr. SANDSTROM. I am handling a couple of antidumping cases right now under the new act. I don't really want to give my final conclusion, because I am not sure that I have formed it yet. But I think that some of the amendments that were adopted in 1979 have turned out in practice to cause possibly more problems for domestic petitioners as well as people representing importer interests than was originally envisaged.

We, too, have access to a lot more documentation than we used to, and that may be a mixed blessing, because it takes an awful lot of time to analyze all these materials. What you now have basically is one case being carried out by the Department of Commerce and parallel cases being carried out by counsel for the petitioner and counsel for respondent. You also have a "motion" practice developing relating to and interlinking these three cases. It gets to be very complex and very expensive.

I am not sure whether this assures a better outcome or not. In some circumstances it may dissuade people from bringing cases.

Mr. BAILEY. Mr. Chairman, may I?

Chairman GIBBONS. Sure.

Mr. BAILEY. We had some comments this morning concerning the antidumping and the extremes of dumping cases. Have you dealt with any of those? Are these dealt with in the status of the law now?

The comments we had this morning were that they were not reachable. We had an example offered to us where a raw steel producer in Japan would give steel to a fabricator, perhaps at below cost. The fabricator would then produce a finished product and sell it to this country not below their cost, but at a very reduced rate reflecting the below-cost raw materials supplied to them.

Have you had any of those types of complaints? Has anyone ever come to you with that kind of thing?

Mr. SANDSTROM. Downstream dumping.

Mr. BAILEY. That is the term.

Mr. SANDSTROM. I have not dealt specifically with this problem in the context of a dumping case. However, I did deal with it in the context of the TPM coverage, where secondary processors were complaining that they weren't being protected because of advantages that were coming to their foreign counterparts. I would point out that in the section 301 context, we also have this question. You get into the concert of primary products, say, an agricultural product, and then a processed product from that agricultural product.

There is a new section 301 complaint on pasta which has been filed. The United States is going to try to argue that this is a processed product and that therefore, there should be no export subsidies. The EC will claim that this is a primary product, probably they will claim this, and therefore that you have to show some adverse trade impacts to show a code violation. So we do have that in the 301 area as well. The EC pasta manufacturers benefit from the basic subsidies on wheat and wheat flour.

In the antidumping area, I don't think there is any easy solution. Whenever you draw a line, then, somebody can argue you should draw it a little farther forward or a little farther back. I think there would be some merit in examining whether you can find ways to quantify the benefit, the value of the benefit on the "margin" on the basic product. Then I think you should be able to deal with it in terms of the dumping context.

Mr. **Bailey**. The motion practice you spoke of, why is that an impediment?

Mr. **Sandstrom**. I am not sure it is an impediment.

Mr. **Bailey**. You spoke as if it were.

Mr. **Sandstrom**. It is an impediment if a client does not want to absorb the cost of a complex investigation—it would really go to the cost of the case. Some dumping cases can be as expensive as major litigation cases. Then you can run into fees in the hundreds of thousands of dollars or several hundreds of thousands of dollars. Now, if the trade injury is not that high, or the outlook for the case——

Mr. **Bailey**. What you are saying, when you say there is an overabundance of material available to you, the law has not been written well enough to really get at the salient points and perhaps come out with a judicial product.

We just do not have a law that is written in the way that results in being judicial. Why would you complain?

Mr. **Sandstrom**. I would not complain as a lawyer. That is my business. But if a client comes to me and says, "We would like to bring a case against a certain product," that may have 10 or 15 different subproducts involved from several countries, and we say, fine, that will cost you several hundred thousand dollars possibly, they may just turn around and say, "The dumping is hurting us, but it is not hurting us that much," and therefore, the case isn't brought.

I am not saying all cases are that expensive, but if in fact the case is not brought because of that——

Mr. **Bailey**. I think most of them are more expensive, aren't they? I have got to tell this to people back home.

Mr. **Sandstrom**. The real issue is whether you are going to let the Department carry out the case with more limited access by the parties.

Mr. **Bailey**. That is really what I am asking. I said a motion practice. If it is not an impediment of somebody there, it is not using it as a vehicle to slow down, slow the case down, to harass the case, as somebody supposedly on your side, I am asking whether or not the Government cooperates with you very well?

Mr. **Sandstrom**. They do. Usually the problem is not the Government's. It is the other side.

Mr. **Bailey**. The other side?

Mr. **Sandstrom**. The opposing lawyers raising opposition and objections, analyzing all available information and commenting on it. You have to deal with all information that becomes available.

Mr. **Bailey**. The Government is not a problem for you, though?

Mr. SANDSTROM. Not generally, no. I sympathize. They have a lot of work to do. Of course, the new procedures increase their workload as well. It makes it harder for them to handle these cases. I am not saying I am opposed to it. I am just saying it is a problem.

Mr. BAILEY. No, no, it is interesting. Thank you.

Mr. RIVERS. Mr. Chairman, may I respond to the general question you asked about whether we are better off now than before the Trade Agreements Act of 1979?

Chairman GIBBONS. Yes.

Mr. RIVERS. I think you must understand that I am a biased witness in this regard.

Chairman GIBBONS. That stands in the background.

Mr. RIVERS. In my view, we now have a better system. That is not to say that it is perfect and that it is not without its frustrations. I think by and large in the antidumping and countervailing duties area we are better off with a shorter investigatory period, the opportunity for an earlier suspension of liquidation in a case, and the changes that were made with respect to the injury test. We now have a situation where an industry can go in and, although it may be injured by a variety of different things—it may be at the bottom of the business cycle—it doesn't preclude them from obtaining import relief just because you don't have to demonstrate that the dumped imports are the principal cause of the industry's injury.

You simply have to say that we are being hurt, we are being hurt by a number of factors, but among them is material injury by reason of dumped or subsidized imports.

I think the Commission, by and large, with respect to the injury question, has administered the law in a responsible fashion. I haven't looked at every case. I am, nevertheless, puzzled by how seldom the threat of injury is found to exist. I am referring to a likelihood of injury situation. There is no reason why an industry has to wait until it is absolutely prostrate before it goes in and makes an antidumping or countervailing duty petition. An industry which is threatened with injury ought to be able to go in and make that kind of a case, and prevail at the Commission, if they can show the kind of criteria that indicate that, for example, there exists increased production abroad, expansion of capacity, likelihood that if the business cycle, if interest rates come down, the business cycle goes up, that the imports are going to come in and capture any growth in the market, those are the kind of critera that I think ought to permit somebody to make a threat of injury case.

It is my impression, however, that affirmative threats of injury findings are rather rare birds. I think there has been one case recently, but in practice it has been almost a dead letter, a very difficult kind of case to make. It ought not be so; because it is recognized in the international agreements, it is in the domestic law, and I think if somebody can go in and show the criteria, they ought to be able to prevail in the right case.

For some reason, it doesn't happen.

Chairman GIBBONS. You have been a very interesting panel, and we have gotten a lot out of it. We will probably be calling on you again.

Mr. **Rivers**. Thank you.

Chairman **Gibbons**. It is becoming obvious that there are probably needs for some substantive and procedural changes in our laws. We would invite you and the other members of the bar and the public to be ready to comment on anything we may see fit to do next year.

We need your help and guidance. Thank you very much.

Mr. **Heron**. Thank you, Mr. Chairman, and members of the committee.

Chairman **Gibbons**. Next, we have Mr. Charles F. Schill, who is going to talk to us about section 337 investigations.

STATEMENT OF CHARLES F. SCHILL, FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, WASHINGTON, D.C.

Mr. **Schill**. Good afternoon, Mr. Chairman and members.

Chairman **Gibbons**. Good afternoon, Mr. Schill. We apologize for having kept you waiting for so long.

Mr. **Schill**. I am very appreciative of having the opportunity to be here today.

Mr. Chairman and members of the subcommittee, my name is Charles F. Schill. I am pleased to have the opportunity to testify at these hearings today. I am presently a lawyer at Finnegan, Henderson, Farabow, Garrett & Dunner.

The views on section 337 that I am going to express today are my own views and not those of my firm or any of my clients. I have requested that my prepared testimony be entered in the record, and that I be allowed to make a few additional comments.

Chairman **Gibbons**. Yes, sir. Your entire testimony will be placed at the end of your comments.

Mr. **Schill**. Thank you, Mr. Chairman. I worked at the International Trade Commission from 1975 to 1979, and participated in the original drafting and implementation of the Commission's Rules of Practice in 337 proposals after the 1974 Trade Act amendments.

During my years at the Commission, I was the staff attorney on approximately 35 section 337 investigations, including the largest investigation to date on copper rods. After leaving the Commission, I have remained active in section 337 litigation and have been involved in at least six additional cases since then.

The section 337 proposal I think is a valuable means for U.S. industries to defend themselves from unfair practices of foreign companies. Today, I would like to concentrate on just two points. One is the great practical utility of the statute and its applicability to a wide variety of unfair trade practices, and the second one is the possible derogation of the Commission's remedy by a too-expansive interpretation of the statute in reveiw of the decisions by the executive branch through the USTR.

The statute is applicable to unfair acts which are practiced by foreign firms. It is not directed at acts by foreign governments, but a wide range of acts such as unfair and deceptive advertising of foreign-made products, counterfeiting of U.S. companies' goods, infringement of U.S. patents, trademarks or copyrights, and various other general antitrust type of activities.

The remedy offered is not an easy one to obtain for a U.S. company, but I believe that is as it should be, since the section provides such favorable jurisdictional attributes, and the possibility of obtaining a remedy against multiple defendants in one action.

The complainant in the case must be prepared to prove issues in addition to the existence of an unfair act. He must prove in most cases that there is a domestic industry, that the domestic industry is efficient and economic, and that that industry is injured.

In addition, he also has to pass a severe public interest determination by the Commission before a remedy is issued. None of these factors are required of a company trying to prove a similar act in a Federal court.

The frequency of recent use of the statute, more than 100 cases since 1975, is clear evidence that it is worthwhile to U.S. companies and is being well administered by the Commission. Prior to the 1974 Trade Act amendments, cases were relatively infrequent, and were extremely time consuming due to the administrative fact-finding procedures employed.

I believe there was little public confidence in the usefulness of the section to stop unfair acts, because there was no certainty in its application.

The 1974 amendments attempted to make the proposals produce timely results by imposing time limits for Commission decisions. This experiment has been made to work well by the Commission.

The 1974 amendments were also an attempt to make the procedure more certain by making them adjudicative on the record proceedings. The amendments gave parties the opportunity to see and rebut evidence on which the determination of a violation was made. This has worked to give greater confidence that the Commission makes fair and impartial decisions, and enhances the Commission's credibility and the correctness of its decisions.

The 1974 amendments were also an attempt to make the imposition of a remedy for a violation more certain. The Commission was given authority to find a violation and then choose the remedy rather than to merely make a recommendation to the President, as was previously the case.

The President's role was changed at that time to give him a veto power over the remedy for overriding public policy reasons. These reasons were to be for foreign policy considerations.

I have treated this in more depth on pages 8 to 11 of my prepared text. Until this year, this change in the statute also appeared to be working. Recently, however, review of ITC decisions by the U.S. Trade Representative appears to have gone beyond examination for foreign policy reasons.

USTR appears to believe that there is review for both foreign and domestic policy reasons, and for substantive factors such as the wording of the Commission order, or the way the determination by the Commission was reached in its adjudicative proceeding.

I do not believe that this was the intent of Congress in passing the 1974 amendments, and it does not make sense in light of the judicial review provisions of the statute. In fact, just last year in the Customs Court Act of 1980, paragraph (c) of the statute was amended to provide for review of domestic policy and public interest factors under a specific Administrative Procedure Act standard.

An example of the extent of the review process, which goes beyond foreign policy, may be useful. In the case of Cast Iron

Stoves, the Commission investigation was completed and the Commission issued an order. The U.S. Trade Representative threatened to veto the order if certain words, "cast on the stove," which was a part of the cease and desist order issued were not changed by the Commission to "placed on the stove." The order was then amended by the ITC.

A further example occurred in the case of papermaking machinery called Head boxes. The Commission's order was vetoed by the President because the order was a general exclusion order rather than specifically directed to a respondent in the case. Here there was a great influx of foreign government and nonparty argument before USTR which was not made before the Commission.

This information and argument I believe caused the veto to occur.

To its credit, I believe since that time, USTR has announced the policy that will not look favorably on comments made before it which were not made before the Commission in its public hearings. However, both of these cases make it appear that the adjudicative process before the Commission, which is specifically reviewable by a court, is only a prelude to nonreviewable actions of the Executive.

It does not engender confidence among U.S. companies who seek to redress significant foreign unfair trade practices under 337.

This leads me to the conclusion that this review process should be altered or eliminated by rewriting section 337(g).

The remaining points of my prepared testimony deal with the proposal for making the temporary exclusion order procedure that the Commission employs more effective, and a proposed technical amendment to 337(c) to provide for a time limit on appeals to the Court of Customs and Patent Appeals that was previously in the statute and I believe inadvertently eliminated, and also a proposal for the increased support of the Commission in pursuing these types of investigations.

Mr. Chairman, I would be glad to answer any questions you may have on these points or on any other points. I appreciate the opportunity to be here today.

[The prepared statement follows:]

STATEMENT OF CHARLES F. SCHILL, LAW FIRM OF FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER

Mr. Chairman and members of the Subcommittee, my name is Charles F. Schill. I pleased to have the opportunity to testify at these hearings today. I am presently a lawyer at Finnegan, Henderson, Farabow, Garrett & Dunner. Prior to entering private practice, I joined the International Trade Commission as a staff attorney and participated in the original drafting and implementation of the Commission's Rules of Practice and Procedure on Section 337 Investigations. I remained with the Commission both in the General Counsel's Office and later in the Office of Legal Services (now the Unfair Imports Investigation Division) until leaving the Commission in November, 1979, for private practice. During my years at the Commission, I handled approximately 35 Section 337 investigations, including the largest investigation to date concerning the Certain Apparatus for the Continuous Production of Copper Rods, Section 337-TA-52.

After leaving the Commission I have remained active in litigating Section 337 investigations, having been involved in an additional six investigations since December, 1979. I have also had the opportunity to speak and write frequently on Section 337 investigations and have some specific ideas concerning the future development of the statute.

In my testimony today I would like to cover the following points:

Use of 19 U.S.C. § 1337 To Remedy Unfair Trade Practices;
Presidential Review of § 337 Determinations;
Temporary Exclusion Order Procedures Lack Practical Utility;
Proposed Technical Amendment of § 337(c); and
The Commission Investigative Staff Should Continue To Be Involved As A Party To The Investigation.

USE OF 19 U.S.C. SECTION 1337 TO REMEDY UNFAIR TRADE PRACTICES

Since the amendments made to § 337 by the Trade Act of 1974 became effective, the Commission has instituted more than 110 investigations at the request of domestic industries. It has completed approximately 90 of these investigations and has issued approximately 25 exclusion or cease and desist orders.

The most prevalent type of investigation is still based upon infringement of a U.S. industry's patent, but a trend is appearing toward consideration of a wider variety of unfair practices. The first several years after the 1974 Trade Act amendments brought an increase in the number of cases filed at the Commission as U.S. companies became aware of the new procedures and ITC precedent in these cases. There now seems to be fairly wide spread knowledge of the law and a recognition of its usefulness especially in the traditional area of patent infringement.

A second stage appears to have begun in which the range of acts alleged to be unfair is increasing. U.S. companies are becoming more confident of the fact that the ITC is a viable forum for international trade problems. This is, I believe, due to the fact that the Commission has a developed set of procedural rules which are effective in implementing the statute and a body of case precedent which demonstrate that it is a fair and impartial forum in which practical results can be achieved. Accordingly, companies appear willing to present increasingly complex and more economically significant problems for adjudication. Many of the unfair acts addressed by the ITC have no other solution, such as use of the statute to prevent importation of goods made by a patented process. Other problems have no economically practical solution absent the provision of this statute preventing importation of unfair products when dozens or even hundreds of foreign infringers are involved.

The statute has been used increasingly over the last six years because it has been demonstrated to be effective. Its efectiveness stems from four major attributes:

1. It is quick. A year or eighteen months provides the complaining domestic industry with a final determination.
2. Although it may not always be a cheap proceeding to file and litigate, at least it is less expensive than long-term or multiple litigations against a great number of defendants. This is significant since it provides a forum in which the smaller sized domestic industry can remedy problems against large or numerous foreign companies.
3. It overcomes jurisdiction and venue problems which could prevent suits in federal courts. It provides for subject matter jurisdiction so long as the unfair acts involved in the Complaint are connected with the imported article and the importation occurs anywhere within the United States.
4. It provides an effective remedy against the importation of goods which are themselves unfair (as in articles bearing a U.S. company's trademark or infringing a U.S. company's patent) or which are used or sold in an unfair manner in the United States (for example, false advertising or palming off). Since the remedy is in rem [1] it is a very powerful method of dealing with unfair acts or methods of competition in international trade.

The Commission has done an admirable job in dealing with an increasing number and variety of complaints. The investigations have been completed within their time limits, and it decisions reveal a strong adherence to the requirements of the Administrative Procedure Act and due process. This, thus provides further credibility to the validity and fairness of its decisions.

Although no one likes to be subject to a suit, I believe that respondents in § 337 proceedings have the advantage of a fair and open adjudication protected by the same rights as a complainant. It is as much to respondents advantage to have a case decided quickly to avoid long term court battles and uncertainty in the market place.

The statute is working well on the acts and methods of competition which the Commission has traditionally found unfair, e.g., patent infringement and passing off. The Commission has expanded its findings of unfair acts to include infringement of trademarks and copyrights in recent cases. The statute is beginning to be used in cases dealing with issues such as simulation of trade dress, false designation of origin and other types of acts which affect both U.S. consumers and U.S. industries ability to compete with foreign unfair practices. There is also a far broader range of activities to which the statute is applicable, including anticompetitive behavior such as attempted monopolization, price discrimination or boycott. The Commission should be encouraged to expand its findings of unfair acts and methods of competition as the appropriate cases arise, either by self-initiating cases or entertaining such when cases filed by domestic industries.

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[1] *Sealed Air* v. *U.S. I.T.C.*, 209 U.S.P.Q. 469 (C.C.P.A. 1981).

PRESIDENTIAL REVIEW OF SECTION 337 DETERMINATIONS

Every final Commission determination of a violation of § 337 is referred to the President for review as required by § 337(g). According to the legislative history of this section.[2] This review is to provide the President an opportunity to disapprove a Commission remedy. The grounds for disapproval are for "overriding policy reasons".[3] It has always been my understanding that it was the intent of Congress in this section to limit the "policy reasons" to foreign economic and political relations. Recent cases have made it appear that there are other factors at work in the process.

The review function is carried out by the office of the U.S. Trade Representative (USTR). This review should be for foreign policy reasons related to the impact of the Commission's Order. It should not be a review of the legal merits of the case, the public interest factors enumerated by the statute or the specific formula of the order. These are matters which the Congress has specifically made reviewable by appeal to the Court of Customs and Patent Appeals under § 337(c). In fact, the standard for review of the public interest factors was dealt with just a year ago in the Customs Court Act of 1980. Additionally, the Commission has instituted specific rules to allow advisory opinions for review of the applicability of its orders. Review by U.S.T.R. of issues determined on the record after hearing is antithetical to the adjudicative scheme established by Congress for administration of this statute.

Litigation of the substantive violation and public interest issues before the Commission has in several recent cases been just the first step towards obtaining relief. A domestic industry has increasingly had to fight for its right to a remedy all over again before U.S.T.R. to ensure that the remedy ordered by the Commission is not disapproved. A U.S. industry has been forced to make its case not only in a rigorous adjudicative proceeding before the Commission, but also against foreign governments and respondents (who may not have appeared before the Commission) in an administrative process with no rules.

Such a system defeats the congressional desire to make § 337 determinations by a fair, adjudicative on the record proceeding and makes it a political free-for-all. The main purpose of the 1974 Trade Act amendments was to eliminate the prior administrative fact finding process which had no procedural safeguards. The Presidential review process as it has been conducted for the past year effectively repeals the gains of the 1974 amendments and encourages respondents to bypass the adjudicative phase entirely. A perception that this is occurring will make the statute ineffective against foreign unfair trade practices.

Perhaps the President should have a right to veto a Commission order for serious foreign policy reasons, but the Commission has shown itself to be extremely responsible and cautious in its determinations and orders. None of the recent cases in which the U.S.T.R. involved itself rose to the level of "overriding policy reasons" but one case was vetoed because of foreign government misperception and dislike of the structure of an ITC order and other cases were threatened with veto for similar reasons. Eliminating the right of the President to disapprove the Commission order would serve the purpose of making all persons who had an interest in the outcome of the case appear before the Commission to openly state their position. To allow arguments before U.S.T.R. only undermines the Congressional intent that these cases be decided on their merits. Eliminating paragraph (g) of the statute would be the best way of accomplishing Congress' original intent.

TEMPORARY EXCLUSION ORDER PROCEDURES LACK PRACTICAL UTILITY

The provision in § 337(e) for temporary exclusion of articles during the period of an investigation has proven in practice to provide no benefit to a domestic industry. In over 90 cases conducted by the Commission since the 1974 amendments, only one complainant has successfully obtained a temporary exclusion order.[4] In that patent case, the patent in issue had already been through a full adjudication by the Commission[5] Thus, the Commission was able to rely on its earlier findings in large part to make a determination in the temporary exclusion order procedure. A second temporary exclusion order appears possible in a recent case in which the Adminsitrative Law Judge has recently issued his recommendation.[6]

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[2] Senate Report No. 93-1298, November, 1974, pp. 198-199.

[3] Id. p. 35.

The primary reason that temporary relief has been almost impossible to obtain has been the insistance on a full hearing on all issues with prior rights to discovery by all parties. The statute in § 337(c) requires that determinations under (d) and (e) be made on the record after notice and opportunity for a hearing. By the Commission rules, temporary exclusion order hearings must be conducted within three months after institution (§ 210.41(c)). If the time schedules are adhered to, the earliest opportunity to receive a temporary order would be approximately five months.

The pace of the normal proceedings, which led to a final decision within one year, is extremely difficult. Extraordinary effort is required to prepare a full case on all issues for a temporary exclusion order hearing, while at the same time continuing discovery and preparation for the main hearing which will occur within another three to four months. Because additional discovery taken after the temporary hearing, and because of the uncertainty of the outcome of the TEO hearing, it is likely that the final hearing will have to be conducted on all issues again. This is very costly for all parties. For small complainants, especially when opposed by large numbers of respondents who are actively contesting the case, this can be an impossible burden. Thus, although most complainants have initially requested temporary relief in their complaint, only a handful have chosen to pursue it through a hearing.

If this section of the statute is to have any practical utility to complainants, it must be made more abbreviated. While still complying with the requirements of § 337(c) for being on the record after notice and opportunity for a hearing, the temporary exclusion order procedure could be greatly condensed. For example, it could be held within the first two to four weeks after institution and have a limited time for hearing with little or no opportunity for discovery permitted prior to the hearing. This type of hearing would resemble the timing and safeguards built into a preliminary injunction hearing in federal courts.

PROPOSED TECHNICAL AMENDMENT OF SECTION 337(C)

Prior to the enactment of the Customs Court Act of 1980, Public Law 96-417, October 10, 1980, 94 Stat. 1727, § 337(c) provided that the Court of Customs and Patent Appeals had jurisdiction to review final Commission determinations under the same conditions as appeals from the U.S. Customs Court. These conditions were given in 28 U.S.C. § 2601 and provided that appeals were to be taken within sixty days.

§ 604 of the Customs Court Act amended § 337(c) by eliminating the sentence referring to the U.S. Customs Court and stating that the standard of review provided was to be as in Chapter 7, Title 5, U.S. Code. The amendment did not carry over any provision for appeal time. Therefore there is no limit to the time for appeals from final ITC decisions in the present law.

This can be corrected by amending § 337(c) to specifically recite that appeals must be taken within sixty days of a final Commission determination. Alternatively, the section could refer to the time limits set forth in the amended 28 U.S.C. § 2601 which deals with appeals from the Court of International Trade.

THE COMMISSION INVESTIGATIVE STAFF SHOULD CONTINUE TO BE INVOLVED AS A PARTY TO THE INVESTIGATION

The Commission rules provide that the Commission investigative attorney is a party to each investigation. (19 C.F.R. § 210.4) As such the investigative attorney has full rights to take part in discovery and the hearings. The role of the investigative attorney has been designed as one to protect the public interest and to ensure an adequate and complete record for the Commission. In investigations initiated by the Commission, this attorney would have a role of the complainant.

In order for the investigative attorney to perform a useful function, he needs adequate time and resources to be as deeply involved in the details of each case as are the private parties. In addition to pursuing independent discovery on issues that the other parties may not attend to, the investigative attorney should perform the role of limiting the issues and facilitating and expenditing discovery. This is especially important in these proceedings where discovery is often the subject of bitter and time consuming disputes. In the course of a one-year investigation where all discovery and a hearing must take place within seven months, there is precious little time for discovery delays by the parties. In assisting the Commission to develop a full record, the investigative attorney should also help it develop a concise record. This may mean that he is required to fight for a limitation on discovery where it is superfluous or marginally relevant. It also requires a thorough knowledge of how Commission cases work, Commission precedent and a tough minded negotiating skill so that parties can be persuaded to conduct their cases effectively and still provide the type of record the Commissioners need to make a final determination.

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[4] Continuous Apparatus For The Production of Copper Rod, 337-TA-89.
[5] Continuous Apparatus For The Production of Copper Rod, 337-TA-52.
[6] Coin Operated Audio-Visual Games, 337-TA-110.

The cost of having this public interest party is well spent in most cases since the Commission is able to provide fast and fair decisions with assurance that the record it has developed is adequate to support its determination.

Some examples of staff involvement and the need for additional resources are apparent from consideration of the case load. In 1976, the first year a separate office was created to handle the investigative function, there were thirteen lawyers assigned to the Office. During that year seven cases were instituted by the Commission.

In 1980 there were eleven attorneys in the office and twenty-four cases were instituted. At the present time, there are only eight attorneys and the same high rate of filing of complaints continues. The present situation is probably temporary, but it is highly burdensome on the Office to make a position contribution in each of the cases.

This reduction in the number of attorneys, combined with the increasing number of cases would, by itself, make it difficult for the investigative attorney to actively participate as a party in each case. There is also the fact, not apparent from the mere number of cases instituted, that the cases have become much more complex in subject matter and affect a much higher dollar volume of trade than they did in earlier years. This in turn makes it even more imperative that the Commission attorney be involved in the details of a case as deeply as the private parties.

In the first year or two after the 1974 amendments, the cases filed involved mainly simple articles, such as sandals, photocubes or toys and represented only low dollar volumes of trade. Along with a public recognition of the changes in the statute, there has been an increases in the use and in the complexity of the articles subject to complaints. In recent years, copper rod and steel rod making apparatus, electronic scoreboards, nuclear particle accelerators and computer controlled machine tools have been involved in Commission cases. These articles have had values of from several hundred thousand dollars to several million dollars for each importation.

This level of use of the statute certainly shows that it is working. It also demands adequate support to enable the Commission to effectively administer the statute and provide a forum for domestic companies to remedy unfair trade practices.

SUMMARY

In summary, I believe that the Commission is enforcing the statute well and effectively, but certain modifications can be made. In order to preserve the integrity of the proceeding, I would recommend that the use of the Presidential veto be curtailed and that all arguments concerning the case be made solely before the Commission. The temporary exclusion order provisions should be made more expeditious in order to make it practical for complainants to pursue this remedy.

The statute should be amended to provide for a time limit to appeal final determinations. Finally, the Commission should be given adequate resources to enable its staff to participate fully in these cases. Failure to follow through with staff involvement will have a significant adverse effect on the Commission's ability to make full, fair and timely decisions in the larger volume of cases which are being filed.

Thank you Mr. Chairman and members of the Committee.

Chairman **Gibbons**. Let me thank you for coming here, for waiting so long and preparing what is obviously an excellent statement. It will be reviewed by me, and I am sure by others. We want to make our own domestic system work better. I realize that we are never going to satisfy everybody who comes into the system, because that is not the purpose of the system, but we want to satisfy people that they have had an opportunity to be heard, that they have been given a fair and a speedy opportunity to be heard, and that once a case is proven and there is a violation, that they get action, affirmative action to remedy the problem.

That is the aim and objective that I espouse, and I am sure most of the members of the committee feel the same way about it.

The hearings we have had today and yesterday, in fact all this week, have been most helpful. I believe that the committee is going to have to develop some remedial legislation that will be very high on our agenda for next year, and the observations that you have made here are most important.

Let me say before I conclude this hearing that we have a markup scheduled tomorrow, and I am going to be as vague as I can about it. I don't like to be vague. I want to cooperate with the administration and try to give them the opportunity to have a markup tomorrow and get favorable action on their proposal, but I doubt that Congress is going to be in session tomorrow.

If the Congress is in session tomorrow, there will be a markup as proposed. If it is not in session, of course, there will be no markup. By "in session," I mean if we have not adjourned sine die for the first half of the 97th Congress, there will be a markup.

This concludes our hearing for this session of Congress. Witnesses scheduled for Thursday and Friday will be rescheduled as soon as possible in the next session of Congress.

Let me say parenthetically in that regard there were a couple of witnesses, one from the AFL-CIO that were interrupted by a vote. We want to give them an opportunity to come back and finish their statement, and give the committee an opportunity to examine their remarks. There was also another panel that we had to cut off. We want to give them an opportunity to come back.

We will issue a press release announcing the dates for our next witnesses. The Chair wishes to thank the staff, the reporting services, and the brave souls who have sat through so much of this hearing, for their attentiveness and for their cooperation and for what I think are a very excellent set of hearings.

I know I have learned a lot from all of it and have a better grasp of the responsibility of this subcommittee. With that, the committee is adjourned, and Merry Christmas, Happy New Year, and a prosperous and healthy new year to everyone.

Thank you.

[Whereupon, at 4:55 p.m., the subcommittee was adjourned.]

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